


Committee members should retain this packet, including the attachments, for future use.

MEMORANDUM

TO: Transportation, Infrastructure, Energy, and Environment Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession 3:**
Bill 37-07, Forest Conservation – Amendments
Resolution to set penalties and fees under the Forest Conservation Law

This is the Transportation, Infrastructure, Energy, and Environment Committee's third worksession on Bill 37-07, Forest Conservation – Amendments, sponsored by the Council President at the request of the Planning Board, which was introduced on December 11, 2007, along with further amendments proposed by Councilmember Elrich.

Committee schedule and process

The previous Committee worksessions, held on February 19 and March 17, introduced Committee members to the current forest conservation law and the underlying state law, and explained how the law is implemented in individual cases. The Committee received presentations and comments from Planning staff, Department of Environmental Protection staff, Councilmember Elrich's staff, and representatives of builders and environmental organizations. Since Councilmember Berliner, lead member for Energy and Environment, was not a Committee member at that time, he did not have the benefit of those discussions.

The broadly representative County Forest Conservation Advisory Committee (FCAC), required by County Code §22A-31, had not been appointed and confirmed when this Committee held its previous worksessions. Since the FCAC began meeting in April, it has reviewed the major issues presented by this Bill and Councilmember Elrich's amendments so that it can present comprehensive recommendations to this Committee. The FCAC is scheduled to meet on September 9 to finalize its report and will present it at your September 22 worksession. We also expect to receive the County Executive's recommendations before that worksession. This Committee has another worksession scheduled for October 6 and can schedule more sessions as necessary.

To minimize confusion (if not tree loss), this memo will reprint much of the background information presented in the earlier Council staff memo's, and this packet will contain many of the same background materials. **This background information and materials will not be reprinted in later staff memos, so Committee members and others should save this packet for future use.**

Forest conservation law background information

Forest v. Trees

State law defines a **forest** as a "biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater." Forest does not include orchards, but does include (1) an area that has at least 100 trees per acre, with at least 50% of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; and (2) a forest area that has been cut but not cleared. County law defines a forest similarly, but specifies that a forest includes plant communities, the understory, and forest floor that covers at least 10,000 square feet and is at least 50 feet wide. However, County law also provides that minor portions of a forest stand which otherwise meet the definition of forest can be less than 50 feet wide if they exhibit the same character and composition as the overall stand.

Tree cover, on the other hand, is defined in County law as the combined area of the crowns of all trees on a tract. Tree cover can look like a forest from an aerial view, but rather than having understory or forest floor, tree cover could have a road or houses beneath it.

State Forest Conservation Law

The County derives our authority to establish a Forest Conservation program from the state. (See ©101-121 for the state forest conservation law.) §5-1603 of the Natural Resources Article (see ©106-108) requires the County to develop a forest conservation program that meets, or is more stringent than, the requirements of state law. Therefore, while the County can adopt more stringent standards than state law, the County cannot adopt less stringent standards.

County Forest Conservation Law

What was the purpose of the Forest Conservation Law? The County forest conservation law is found in County Code Chapter 22A (see ©122-168). §22A-2 presents the legislative findings and purposes. In the findings, the Council found that:

Trees and forest cover constitute an important natural resource. Trees filter groundwater, reduce surface runoff, help alleviate flooding, and supply necessary habitat for wildlife. They cleanse the air, offset the heat island effects of urban development, and reduce energy needs. They improve the quality of life in a community by providing for recreation, compatibility between different land uses, and aesthetic appeal. The Council finds that tree loss as a result of development and other land disturbing activities is a serious problem in the County.

The stated purposes of the law are to:

- save, maintain, and plant trees and forested areas for the benefit of County residents and future generations;
- establish procedures, standards, and requirements to minimize tree loss as a result of development and to protect trees and forests during and after construction or other land disturbing activities;
- establish procedures, standards, and requirements for afforestation and reforestation of land subject to an application for development approval or a sediment control permit;
- establish a fund for future tree conservation projects, including afforestation and reforestation; and
- provide a focused and coordinated approach for County forest conservation activities.

Who does the County law apply to? A person¹ who meets any of the following criteria must comply with the County Forest Conservation Law:

- 1) a person who must obtain development plan approval, diagrammatic plan approval, project plan approval, preliminary plan of subdivision approval, or site plan approval;
- 2) a person who must obtain special exception approval or a sediment control permit on a tract of land 40,000 square feet or larger;
- 3) a person who performs any cutting or clearing, or any other land disturbing activity that would directly threaten the viability of, any champion tree, wherever located;
- 4) a government entity subject to mandatory referral under the Regional District Act on a tract of land 40,000 square feet or larger which is not exempt because the State Department of Natural Resources reviews the project;
- 5) highway construction not exempt under State law; and
- 6) non routine public utility land clearing that is not exempt under State law.

Current §22A-5 exempts certain activities from the requirement to submit a Forest Conservation Plan. These “exemptions” are commonly misstated as exemptions from the Forest Conservation Law.

What does the County law require applicants to submit? County law requires a person subject to the Forest Conservation Law (i.e., who meets any of the criteria listed in the preceding section) to submit a **Forest Stand Delineation** and a **Forest Conservation Plan** prepared by a licensed forester, licensed landscape architect, or other qualified professional. The timeframes for submission and approval of the Forest Stand Delineation and the Forest Conservation Plan essentially mirror the timeframes in state law.

¹County Code §22A-3, defines “person for purposes of the forest conservation law:

Person means:

- (1) the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units,
- (2) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind,
- (3) any partnership, firm, common ownership community or other homeowners' association, public or private corporation or any of their affiliates or subsidiaries, or
- (4) any other entity.

Who does not need to file a Forest Stand Delineation or Forest Conservation Plan?

County law specifies that persons who conduct certain activities are not required to submit a Forest Stand Delineation or a Forest Conservation Plan. For example, the following activities are “exempt” from filing these documents.

- 1) an activity conducted on an existing single lot of any size that is required to construct a house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:
 - does not require a special exception;
 - does not result in the cutting, clearing, or grading of:
 - more than a total of 40,000 square feet of forest;
 - any forest in a stream buffer,
 - any forest on property located in a special protection area which must submit a water quality plan,
 - any specimen or champion tree, or
 - any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and
 - is subject to a declaration of intent filed with the Planning Director stating that the lot will not be the subject of additional regulated activities within 5 years of the cutting, clearing, or grading of forest;
- 2) an agricultural activity that is exempt from both platting requirements and any requirement to obtain a sediment control permit. Agricultural support buildings and related activities are exempt only if built using best management practices;
- 3) a tree nursery; and
- 4) a commercial logging and timber harvesting operations that meets certain criteria.

If an “exempted” activity involves clearing of a specimen or champion tree, then a **Tree Save Plan** is required. A Tree Save Plan indicates where trees must be retained or planted. If a person is exempt from filing a Forest Stand Delineation and a Forest Conservation Plan, the forest conservation regulations require a person to submit a **Natural Resources Inventory**, which is used to determine if less than 40,000 or 5,000 square feet of forest, forest in a stream buffer, or a champion or specimen tree would be removed. Additionally, anyone who uses certain exemptions (such as an activity conducted on an existing single lot that is required to construct dwelling house or accessory structure intended for the use of the owner, a real estate transfer, and agricultural exemptions) must submit a Declaration of Intent stating that the tree cutting on the property is exempt from the Forest Stand Delineation and Forest Conservation Plan requirements and will not circumvent the law’s requirements.

What replanting does the law require? When development would disturb a parcel of land, two different replanting requirements can apply: afforestation (when land that did not have forest on it would be disturbed) and reforestation (when land with forest would be disturbed). Table 1 summarizes the **afforestation** requirements.

Table 1. Required Afforestation as a Percentage of Net Tract Area

<i>Land Use Category</i>	Afforestation Threshold	Afforestation Planting Requirement
Agricultural and resource area	20%	20%
Medium density residential area	20%	20%
Institutional development area	20%	15%
High density residential area	20%	15%
Mixed-use and planned unit	20%	15%
Commercial and industrial area	20%	15%

County law defines the land use categories used in these tables as follows:

- Agricultural and Resource Area: an undeveloped area zoned for a density of less than or equal to one dwelling unit per 5 acres.
- Medium Density Residential Area: an area zoned for a density greater than one dwelling unit per 5 acres and less than or equal to one dwelling unit per 40,000 square feet.
- Institutional Development Area: land occupied by uses such as religious institutions, schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, fire stations, golf courses, recreation areas, parks, and cemeteries.
- High Density Residential Area: an area zoned for densities greater than one dwelling unit per 40,000 square feet.
- Mixed-use Development Area: a single, relatively high-density development project, usually commercial in nature, which includes 2 or more types of uses.
- Planned Unit Development Area: a development comprised of a combination of land uses or varying intensities of the same land use, with at least 20 percent of the land permanently dedicated to open space, under an approved integrated plan that provides flexibility in land use design.
- Commercial and Industrial Area: manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yards, and parking areas.

Reforestation requirements vary depending on whether the land meets the forest conservation thresholds shown in Table 2.

Table 2. Forest Conservation Threshold as a Percentage of Net Tract Area

<i>Land Use Category</i>	Forest Conservation Threshold
Agricultural and resource area	50%
Medium density residential area	25%
Institutional development area	20%
High density residential area	20%
Mixed-use and planned unit development area	15-20%
Commercial and industrial area	15%

If the area of forest removed is *above* the forest conservation threshold, a person must plant 1/4 acre for each acre of forest removed. If the area of forest removed is *below* the forest conservation threshold, a person must plant 2 acres for every acre removed.

County law requires each Forest Conservation Plan to include a 2-year maintenance agreement for afforestation and reforestation areas. Maintenance can include watering, feeding, and replanting.

Who enforces the County law? The Planning Board is the primary enforcement authority, although the Council has some flexibility in assigning enforcement authority. The Board can bring a civil or criminal action to enforce the Law. It can suspend or revoke a Forest Conservation Plan after providing an opportunity for a hearing. Additionally, the Planning Director can issue an administrative order directing a violator to take corrective actions.

What penalties apply to violations of the County Law? A violation of the law is a Class A violation, with a maximum civil fine of \$1,000 each day a violation continues. Council Resolution 15-1271, adopted on December 13, 2005, also specifies a maximum \$9 per square foot administrative civil penalty for violating the County law. If reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the applicant must pay the Forest Conservation Fund a 90-cent per square foot fee-in-lieu payment. These amounts are adjusted annually by the increase or decrease in the Consumer Price Index for the metropolitan area.

Can a person get a waiver from any part of the County law? Yes. §22A-21 specifies how to obtain a variance from the law. A person may request a variance in writing if the person shows that enforcement of the law would result in unwarranted hardship. However, the Planning Board cannot grant a variance if the request:

- will confer on the applicant a special privilege that would be denied to other applicants;
- is based on conditions or circumstances which are the result of applicant's actions;
- arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
- will violate State water quality standards or cause measurable degradation in water quality.

Bill 37-07 (Planning Board amendments)

What is the purpose of Bill 37-07? According to the Planning Board, the goals of Bill 37-07 are to clarify and moderately strengthen the County forest conservation law and resolve inconsistencies. Bill 37-07 was not intended to materially change the law's applicability, but to clarify who the law applies to and what materials must be submitted.² To that end, Bill 37-07 would create 3 levels of review, with different submission requirements for each level. As introduced, Level 1 would be the most stringent level of review and Level 3 would be the least stringent. However, the recent Planning staff amendment reverses that order, so that Level 3 is the most stringent and Level 1 the least. **Each project would be subject to the least restrictive level of review that applies.** For example, as amended, if a project meets the criteria for a Level 1 and Level 3 review, the project would be subject to Level 1 (the least stringent) review.

When is a Level 3 Review (as amended) required? Under Bill 37-07, a Level 3 (formerly Level 1) review is required when:

- a person is required by law to obtain approval for a development plan, diagrammatic plan, project plan, preliminary plan of subdivision, or site plan;
- a person is required by law to obtain a sediment control permit or approval of a special exception on a tract of land which is 40,000 square feet or larger;
- a person proposes to perform any cutting or clearing, or any other land disturbing activity that would threaten the viability of any champion tree, wherever located;
- a person is subject to mandatory referral or a park facility plan on a tract of land which is 40,000 square feet or larger;
- a person proposes certain highway construction; or
- a public or private utility proposes a cumulative limit of disturbance of 40,000 square feet or more for all stages of work in a public right-of-way or utility easement.

A person who is subject to a Level 3 review must submit both a **Natural Resource Inventory/Forest Stand Delineation** and a **Forest Conservation Plan**. A Natural Resource Inventory is a collection of existing, natural, and environmental information for a property and the surrounding area. A Forest Stand Delineation denotes the existing vegetation in relation to the natural resources on the site.

When is a Level 2 Review required? Under Bill 37-07, Level 2 review is required when a person proposes:

- to build, on a single lot which is 40,000 square feet or larger, a house, an addition to a house, or an accessory structure (such as a pool, tennis court, or shed), if the activity does not result in cutting, clearing, or grading:
 - more than 40,000 square feet of forest;
 - any forest in an environmental buffer;

²Bill 37-07 as introduced inadvertently modified the applicability provisions in ways that the Planning Board did not intend. Planning staff recently submitted a technical amendment to correct this and other ambiguities in §22A-4. See ©309-312.

- any forest on property located in a special protection area which must submit a water quality plan;
- any specimen or champion tree; or
- any tree or forest that is subject to a previously approved forest conservation plan or tree save plan;
- a minor subdivision involving a lot line adjustment, conversion of an existing recorded outlot, or joining 2 or more existing residential lots into one lot, if:
 - the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); and
 - development does not result in cutting, clearing, or grading:
 - more than 40,000 square feet of forest;
 - any forest in an environmental buffer;
 - any forest on property located in a special protection area which must submit a water quality plan;
 - any specimen or champion tree; or
 - any tree or forest that is subject to the requirements of a previously approved forest conservation plan or tree save plan;
- to modify existing non-residential developed property if less than 5,000 square feet of forest will be cleared; or
- a State or County highway construction activity that is subject to either §5-103 of the Natural Resources Article of the Maryland Code or Level 1 Review.

A person who is subject to a Level 2 review must submit a **Tree Inventory**, **Tree Protection Plan**, and **Declaration of Intent**. A Tree Inventory documents the condition of individual trees and assesses the tree's suitability for preservation relative to probable impacts from development or construction. A Tree Protection Plan indicates where trees must be retained or planted. A Declaration of Intent shows the landowner's reasons why the proposed activity does not require a more stringent level of review, any action that would require a Forest Conservation Plan will not occur within 7 years after the proposed activity is finished, and the proposed activity will not circumvent the Law's requirements.

When is a Level 1 Review (as amended) required? Under Bill 37-07, a Level 1 review, which is the least stringent review level, is required when:

- a person proposes an agricultural activity that is exempt from:
 - platting requirements; and
 - a requirement to obtain a sediment control permit.

An agricultural support building and related activity is excluded only if it is built and conducted using best management practices, as defined by the Natural Resources Conservation Service:
- a person proposes a tree nursery;
- a person applies for a special exception for an existing structure, and the proposed use will not result in clearing existing forest or trees;
- a person proposes certain commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program but authorized by state law:

- a person proposes a government project reviewed for forest conservation purposes by the State Department of Natural Resources under state law;
- a person conducts routine maintenance of public utility easements and rights-of-way, or routine maintenance of stormwater management facilities that are not subject to an existing conservation easement, except for clearing access roads;
- a person conducts utility or other work required in an emergency;
- a person conducts noncoal surface mining regulated under state law.
- a person cuts or clears a public utility right-of-way or land for certain electric generating stations.

A person who is subject to a Level 1 review must submit only a **Declaration of Intent**. As already noted, a Declaration of Intent shows why a landowner believes that the proposed activity does not require a more stringent level of review, any action that would require a Forest Conservation Plan will not occur within 7 years after the proposed activity is finished, and the proposed activity will not circumvent the Law's requirements.

How would Bill 37-07 change the replanting requirements? Bill 37-07 would change the law's afforestation requirements and forest conservation thresholds. Table 3 summarizes the afforestation requirements in the existing Law and Bill 37-07.

Table 3. Required Afforestation as a Percentage of Net Tract Area

<i>Land Use Category</i>	<i>Current Law</i>	<i>Bill 37-07</i>	<i>Current Law</i>	<i>Bill 37-07</i>
	Afforestation Threshold	Afforestation Threshold	Afforestation Planting Requirement s	Afforestation Planting Requirement s
Agricultural and resource area	20%	20%	20%	20%
Medium Density residential area	20%	20%	20%	25%
Institutional development area	20%	20%	15%	20%
High density residential area	20%	20%	15%	20%
Mixed-use and planned unit development area	20%	20%	15%	20%
Commercial and industrial area	20%	20%	15%	20%

The reforestation requirements vary, depending on whether the land meets the forest conservation thresholds shown in Table 4.

Table 4 Forest Conservation Thresholds as a Percentage of Net Tract Area

<i>Land Use Category</i>	Current Law	Bill 37-07
Agricultural and resource area	50%	50%
Medium density residential area	25%	30%
Institutional development area	20%	25%
High density residential area	20%	25%
Mixed-use and planned unit development area	15-20%	20-25%
Commercial and industrial area	15%	20%

If the area of forest removed is *above* the forest conservation threshold, a person must plant 1/4 acre for each acre of forest removed. If the area of forest removed is *below* the forest conservation threshold, a person must plant 2 acres for each acre removed.

As already noted, County law requires a Forest Conservation Plan to include a 2-year maintenance agreement for conservation areas. Bill 37-07 would increase this requirement to 5 years.

How would Bill 37-07 change enforcement? Bill 37-07 would not amend the enforcement provisions that are specified in current law. The Planning Board expects to adopt new enforcement regulations, subject to Council review under Method 2, shortly.

What other significant changes would Bill 37-07 make? Bill 37-07 would make 2 other notable changes to existing law: it would delete much of the County Arborist's authority, and would eliminate the Forest Conservation Advisory Committee.

Current §22A-30 specifies the qualifications and duties of the County Arborist. See §62-63 for a detailed list of duties assigned to the County Arborist. Bill 37-07, as introduced, would delete §22A-30. However, elsewhere Bill 37-07 references certain duties of the County Arborist related to commercial logging and timber harvesting operations. The County Arborist also continues to have authority to recommend actions on requested variances to the Law. Council staff understands from Planning staff that their intent was to identify the County Arborist in the definitions section, rather than spell out the position duties in the law. However, Bill 37-07 does not define the County Arborist. *Council staff will recommend retaining the current law's Arborist provisions in §22A-30.*

Current §22A-31 establishes and specifies the membership and duties of the Forest Conservation Advisory Committee (FCAC). As introduced, Bill 37-07 would delete the FCAC from the current law, but Planning staff has said they did not really intend to do so. *Council staff will recommend retaining the FCAC.*

Amendments proposed by Councilmember Elrich (see ©68-98)

What applicability changes did Councilmember Elrich propose? As already noted, the Forest Conservation Law is triggered when a tract of land is at least 40,000 square feet. As introduced, Councilmember Elrich's amendments would lower this trigger to 10,000 square feet; however, he has more recently said he will support retaining the 40,000 square foot trigger. Additionally, under current law an owner need not file a Forest Conservation Plan or Forest Stand Delineation if the person is clearing less than 40,000 square feet of forest. Councilmember Elrich would lower this threshold to 5,000 square feet.

What land use category changes would Councilmember Elrich make? Current law uses 7 land use categories to calculate afforestation and reforestation requirements. Bill 37-07 would retain the existing categories. Councilmember Elrich would modify the land use categories as shown on Table 5.

Table 5. Land Use Categories

Land Use Category	Existing Law	Elrich amendments
Agricultural and resource area	An undeveloped area zoned for a density less than or equal to one dwelling unit per 5 acres	No change.
Low density residential area	Not in current law.	An area zoned for a density greater than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per acre.
Medium density residential area	An area zoned for a density greater than one dwelling unit per 5 acres and less than or equal to one dwelling unit per 40,000 square feet.	An area zoned for density greater than 1 dwelling unit per acre and less than or equal to 10 dwelling units per acre.
Institutional development area	Land occupied by uses such as religious institutions, schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, fire stations, golf courses, recreation areas, parks, and cemeteries.	Deleted
High density residential area	An area zoned for densities greater than one dwelling unit per 40,000 square feet.	An area zoned for densities greater than 10 dwelling units per acre.

Mixed-use development area	A single, relatively high-density development project, usually commercial in nature, which includes 2 or more types of uses.	No change.
Planned unit development area	A development comprised of a combination of land uses or varying intensities of the same land use, having at least 20 percent of the land permanently dedicated to open space, under an approved integrated plan that provides flexibility in land use design.	No change.
Commercial and industrial area	Manufacturing operations, office complexes, shopping centers, and similar uses and their associated storage areas, yards, and parking areas.	No change.

How would Councilmember Elrich amend the replanting requirements?
Councilmember Elrich would modify both the afforestation requirements and the forest conservation thresholds. Table 6 summarizes the afforestation requirements in the existing law and proposed in Bill 37-07 and by Councilmember Elrich.

Table 6. Required Afforestation as a Percentage of Net Tract Area

	<i>Current Law</i>	<i>Bill 37-07</i>	<i>Elrich Amendment</i>	<i>Current Law</i>	<i>Bill 37-07</i>	<i>Elrich Amendment</i>
<i>Land Use Category</i>	Afforestation Threshold	Afforestation Threshold	Afforestation Threshold	Afforestation Planting Requirements	Afforestation Planting Requirements	Afforestation Planting Requirements
Agricultural and resource area	20%	20%	20%	20%	20%	20%
Low density residential area	N/A	N/A	20%	N/A	N/A	20%
Medium density residential area	20%	20%	25%	20%	25%	20%
Institutional development area	20%	20%	N/A	15%	20%	N/A
High density residential area	20%	20%	20%	15%	20%	20%
Mixed-use and planned unit development Area	20%	20%	20%	15%	20%	20%
Commercial and industrial Area	20%	20%	20%	15%	20%	20%

The reforestation requirements vary, depending on whether the land meets the forest conservation thresholds shown in Table 7.

Table 7 Forest Conservation Thresholds as a Percentage of Net Tract Area

<i>Land Use Category</i>	<i>Current Law</i>	<i>Bill 37-07</i>	<i>Elrich Amendments</i>
Agricultural and resource area	50%	50%	50%
Low density residential area	N/A	N/A	40%
Medium density residential area	25%	30%	30%
Institutional development area	20%	25%	N/A
High density residential area	20%	25%	25%
Mixed-use and planned unit development area	15-20%	20-25%	20-25%
Commercial and industrial area	15%	20%	20%

As already noted, the current law provides that if the area of forest removed is above the forest conservation threshold, a person must plant 1/4 acre for each acre of forest removed. Bill 37-07 would not change this requirement. Councilmember Elrich would increase the required planting to 1/2 acre for each acre of forest removed. Under Councilmember Elrich's amendments, as with current law and Bill 37-07, if the area of forest removed is below the forest conservation threshold, a person must plant 2 acres for each acre removed.

As already, County law requires a Forest Conservation Plan to include a 2-year maintenance agreement for conservation areas. Bill 37-07 would increase this agreement to 5 years; Councilmember Elrich would concur with Bill 37-07.

How would Councilmember Elrich revise the law's penalties? As already noted, Resolution 15-1271, adopted on December 13, 2005, authorizes a \$9 per square foot penalty for violations on the Law. If reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person must pay the Forest Conservation Fund a 90-cent per square foot fee-in-lieu payment. These amounts are adjusted annually by the increase or decrease in the Consumer Price Index for the metropolitan area. Councilmember Elrich introduced a resolution (see ©99-100) that would increase the fee-in-lieu payment to \$2 per square foot if reforestation or afforestation on-site or off-site cannot be reasonably accomplished

Councilmember Elrich also would prohibit the Director of Permitting Services from issuing a building permit for 5 years for a structure located on land from which a tree has been cut, cleared, or graded in violation of the forest conservation law.

What other enforcement and notice provisions did Councilmember Elrich propose? Councilmember Elrich would retain the enforcement provisions that are in current law, but add another enforcement mechanism: a private civil action. Councilmember Elrich would allow an aggrieved party – which would include any County resident or organization – to file a private civil action to challenge the factual basis of a Planning Board or Planning Director order.

Councilmember Elrich also would require a person subject to a Level 1, 2, or 3 Review to notify the Planning Director and owners of adjoining or confronting properties in writing at least 10 days before the person does any cutting, clearing, or grading on the property.

What changes did Councilmember Elrich propose for the County Arborist?
Councilmember Elrich would retain the Arborist but rename the position County Forest Conservation Coordinator. The Arborist's qualifications would remain the same, but 2 additional duties would be specified:

- identify and prioritize offsite forest planting and forest retention areas for County projects;
- direct an on-going interagency forest conservation team of representatives from appropriate departments and commissions

Issues for Committee Discussion

As previously mentioned, the Forest Conservation Advisory Committee expects to deliver its report to this Committee at your September 22 worksession. That report will offer comprehensive recommendations on the issues listed on ©300-306. Rather than anticipate the FCAC presentation, this memo will focus on a few initial issues that we think this Committee can usefully discuss, if not resolve, at this worksession. After this Committee reviews the coverage and regulatory issues that the FCAC will discuss on September 22, Council staff recommends that the remaining procedural and enforcement issues – e.g. penalties, neighbor notice, standing to sue – be left to the final worksession on this Bill, whenever that occurs.

1) *What is the goal of the forest conservation law?* County Code §22A-2 (see ©2-3, lines 14-28) lists the purpose of the forest conservation law:

- save, maintain, and plant trees and forested areas for the benefit of County residents and future generations;
- establish procedures, standards, and requirements to minimize tree loss as a result of development and to protect trees and forests during and after construction or other land disturbing activities;
- establish procedures, standards, and requirements for afforestation and reforestation of land subject to an application for development approval or a sediment control permit;
- establish a fund for future tree conservation projects, including afforestation and reforestation; and
- provide a focused and coordinated approach for County forest conservation activities.

Bill 37-07 would add another goal: to “maximize forest retention” (©2, line 21). Councilmember Elrich would amend the first goal to emphasize no forest net loss (©69, lines 16-19). The Planning Board did not oppose Councilmember Elrich's amendment. The Sierra Club and others supported maximizing forest retention and ensuring no net loss of forest in the County (©266-268). Former County staff member Vincent Berg would add language specifying “a program of scientific based sustainable forest management” as one of the law's purposes (©257).

As Committee members noted at an earlier worksession, these goals may not give County residents and businesses sufficient specificity as to what the forest conservation program is trying to accomplish. It is unclear whether the law's primary goal should be to protect as many individual trees as possible, to assure no overall net loss of forest, or something else.

2. Should the law specify different levels of review for different projects?

For a summary of the current forest conservation law's coverage provisions, see pages 3-4 of this memo. For a summary of Bill 37-07's coverage provisions, see pages 7-9 of this memo.

The current law "exempts" certain activities from filing a forest conservation plan. These activities, listed in current §22A-5, are often misconstrued as exemptions from the entire forest conservation law. To clarify this common misconception, the Planning Board would delete "exemptions" from the law and require an activity subject to the law to submit to one of 3 levels of review. The Planning Board intends that any activity that meets the criteria for more than one level of review would undergo the **least stringent** level of review.

As a threshold issue, the Committee should decide whether to retain the current structure of the law or clarify the current law. The Maryland National Capital Building Industry Association (BIA) supported the Planning Board's tiered approach (©269), but the Agricultural Preservation Advisory Board did not (©284).³ The activities that would require a Level 1 review are generally those activities that under the current law that require a forest conservation plan. The activities that currently do not need to submit a forest conservation plan would now face either a Level 2 or Level 3 review. Given the extent of confusion around the current law, particularly regarding "exempted" activities, **Council staff recommends** using the tiered approach to clarify the current law.

As previously noted, Planning staff submitted a technical amendment (see ©309-312) to conform this provision to the Planning Board's intent and make it easier to understand. At this Committee's February 19 worksession, Councilmember Floreen asked Council staff to assure that the Bill's applicability section is clear on who the law covers. **Council staff believes that the Planning staff amendment would generally accomplish that goal, and recommends that the Committee approve it subject to a few further technical clarifications that we will discuss with Planning staff.**

3. What other applicability issues have arisen?

Two other applicability questions require the Committee's attention:

Commercial Logging and Timber Harvesting Operations. The Maryland Department of Natural Resources, the County Forest Conservancy District Board, and others urged that commercial logging and timber harvesting operations be treated the same as agricultural

³Their specific concerns about the applicability of the law to agricultural activity are discussed on pages 16-17.

operations (©275-280)⁴. Current law exempts commercial logging and timber harvesting operations from submitting a forest conservation plan or forest stand delineation if the operation:

- is completed before July 1, 1991, or after July 1, 1991 and the property is not the subject of an application for development within 5 years after a sediment control permit has been issued;
- received approval from the County Arborist that the logging or timber harvesting plan is not inconsistent with County forest management objectives; and
- received a sediment control permit and posted the required financial security.

Current law also requires the Department of Permitting Services to send the Planning Director a copy of all sediment control permits issued for these operations. These requirements apply to commercial logging and timber harvesting operations on agricultural land.

Under Bill 37-07, these operations would retain the last 2 requirements, and the requirement that these operations give a copy of each issued sediment control permit to the Planning Director (©11, lines 248-262). The more recent Planning staff amendment on ©309-312 subjects logging and timber harvesting only to a Level 1 review, requiring only a Declaration of Intent.

According to Planning staff, these requirements were originally added to the forest conservation law to assure the protection of natural resources in the County. Planning staff noted the following examples of why greater oversight is necessary:

- sites with approved state timber harvest permits were cleared to within 25 feet of streams (because not all streams were identified, some sites were cleared right to the stream);
- vehicles ran through environmentally sensitive areas without controls;
- sites with approved state timber harvest permits were not cleaned of all downed woody materials;
- forest never naturally regenerated and became heavily infested with non-native and invasive materials because of poor timber harvesting practices and clear cutting;
- the County did not always receive assurance that the state was not approving a timber harvest permit on land protected by a conservation easement without permission of the grantee.

Agriculture. Several agricultural organizations expressed concerns about how Bill 37-07 would apply to agricultural activities (©281-289). Under current law, an agricultural activity that is subject to the forest conservation law is exempt from the requirements to submit a forest stand delineation or a forest conservation plan if the “agricultural activity . . . is exempt from both platting requirements . . . and requirements to obtain a sediment control permit”. Currently, if agricultural land will change from an agricultural to a non-agricultural use, the developer of the agricultural land must file a forest conservation plan. (Agricultural support buildings and related activities are exempt from submitting a forest stand delineation or forest conservation

⁴As discussed in greater detail in the next subsection of this memo, under Bill 37-07 agricultural activity that is exempt from platting requirements and not required to obtain a sediment control permit would be required to submit a Declaration of Intent.

plan if they are built using best management practices.) Planning staff indicated that they now require agricultural activity that is exempt from platting and sediment control permit requirements to submit a declaration of intent to assure that the agricultural activity qualifies for the exemption from submitting a forest conservation plan. Bill 37-07 and the recent Planning staff amendment would require a Level 1 review (Declaration of Intent) for an agricultural activity that is exempt from platting and sediment control permit requirements, as Planning staff now requires.⁵

At the public hearing, Planning Board Chairman Hanson noted that the Board did not intend to change the requirements for agricultural activity. Only activities that meet the criteria identified in §22A-4 would be subject to the forest conservation law. **If the only requirement for a Level 1 review is submission of a Declaration of Intent, Council staff interprets Bill 37-07 to be substantially similar, if not identical, to what is now required for agricultural activity.** Under Bill 37-07 and current law, if agricultural land is altered from an agricultural to a non-agricultural use, the agricultural land would be subject to a higher level of review.

This packet contains	Circle
Bill 37-07	1
Memo from Planning Board Chair	66
Amendments by Councilmember Elrich	68
Resolution to revise penalties and fees	99
State forest conservation law	101
County forest conservation law	122
(Intentionally omitted)	169-189
Memo from Planning staff re Councilmember questions	190
Planning Board Forest Conservation Task Force Report	206
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Vince Berg	255
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BIA	269
American Forestry Foundation	275
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Maryland Dept. of Natural Resources	278
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Agricultural Advisory Committee	281
Agricultural Preservation Advisory Board	283

⁵Under Code §19-2(a) a sediment control permit is not required for accepted agricultural land management practices used in the cultivation of land in order to further crop and livestock production, such as plowing and construction of agricultural structures on land that:

- has been farmed by, or with the permission of, the same owner during the proceeding 5 years; or
- in the event of a transfer of ownership or other appropriate circumstance, is the subject of a declaration of intent to farm under Title 13 of the Tax-Property Article of the Maryland Code or a comparable declaration filed with the Department by the owner. This exemption does not include wholesale or retail nursery operations or logging and timber removal operations;


Montgomery County Farm Bureau	286
Montgomery Soil Conservation District	288
DEP examples of effect of current law and amendments	290
DEP comparison of current law and amendments	300
Flowchart from Potomac Conservancy	307
Size information from Potomac Conservancy	308
Planning staff applicability amendment	309

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Committee members should retain these attachments for future use.
--

M E M O R A N D U M

TO: Transportation, Infrastructure, Energy, and Environment Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Attachments -- Worksession 3:**
Bill 37-07, Forest Conservation – Amendments
Resolution to set penalties and fees under the Forest Conservation Law

This packet contains	Circle
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Bill No. 37-07
Concerning: Forest Conservation -
Amendments
Revised: 10/19/07 Draft No. 2
Introduced: 12/11/07
Expires: June 11, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

AN ACT to:

- (1) remove certain exemptions from the Forest Conservation Law;
- (2) require certain people to submit to certain level of reviews when applying to the Planning Board for certain plans;
- (3) establish criteria and requirements for certain levels of review;
- (4) revise certain retention, afforestation, and reforestation requirements;
- (5) modify the management periods for planted forests;
- (6) revise certain financial security requirements;
- (7) revise certain inspection requirements;
- (8) revise certain appeal procedures;
- (9) revise certain variance requirements;
- (10) modify the maintenance period for forest mitigation banks and conservation areas;
- (11) repeal certain provisions relating to the Forest Conservation Advisory Committee;
- (12) repeal certain provisions relating to the County Arborist; and
- (13) generally amend the County forest conservation law.

By amending

Montgomery County Code
Chapter 22A, Forest Conservation
Sections 22A-2 through 22A-13, 22A-15 through 22A-17, 22A-19 through 22A-21,
22A-26, 22A-27, 22A-30, 22A-31

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-2 through 22A-13, 22A-15 through 22A-17, 22A-19**
2 **through 22A-21, 22A-26, 22A-27, 22A-30, 22A-31 are amended as follows:**

3 **22A-2. Findings and purpose.**

4 (a) *Findings.* The County Council finds that trees and forest cover
5 constitute an important natural resource. [Trees filter] Forest filters
6 groundwater, reduce surface runoff, help alleviate flooding, and
7 supply necessary habitat for wildlife. [They] Trees cleanse the air,
8 offset the heat island effects of urban development, and reduce energy
9 needs. They improve the quality of life in a community by providing
10 for recreation, compatibility between different land uses, and aesthetic
11 appeal. The Council finds that [tree] forest loss as a result of
12 development and other land disturbing activities is a serious problem
13 in the County.

14 (b) *Purpose.* The [purpose] purposes of this Chapter [is] are to:

- 15 (1) save, maintain, and plant trees and forested areas for the benefit
16 of County residents and future generations;
17 (2) establish procedures, standards, and requirements to minimize
18 [tree] forest loss as a result of development and to protect trees
19 and forests during and after construction or other land
20 disturbing activities;
21 (3) maximize forest retention;
22 (4) establish procedures, standards, and requirements for
23 afforestation and reforestation of land subject to an application
24 for development approval or a sediment control permit;
25 [(4)] (5) establish a fund for future [tree] forest conservation projects,
26 including afforestation and reforestation; and

27 [(5)] (6) provide a focused and coordinated approach for County
28 forest conservation activities.

29 **22A-3. Definitions.**

30 In this Chapter, the following terms have the meanings indicated:

31 * * *

32 Afforestation threshold means a specific percentage of a tract which is used
33 to determine the afforestation requirements.

34 * * *

35 Applicant means a person who submits a natural resource inventory/forest
36 stand delineation, forest conservation plan, tree inventory, or tree protection
37 plan to the Planning Director.

38 Certified arborist means a person with the technical competence to provide
39 for or supervise the management and protection of trees and other woody
40 plants in residential, commercial, and public landscapes. For purposes of
41 this Chapter, a person can gain technical competence through experience and
42 related training provided by a professional organization or a program of
43 professional education.

44 Champion tree means the largest tree of its species in the County, [as
45 designated by the] as identified in the County Forest Conservancy District
46 [Board] Board's Champion Tree Register [or its designee].

47 * * *

48 Declaration of [intent] Intent means a signed and notarized statement by a
49 landowner that the cutting of trees on the landowner's property:

- 50 (1) is [for purposes exempted under this Chapter; and] to comply with
51 Sections 22A-10(b)-(c);
52 (2) no activity requiring a Forest Conservation Plan will occur on site
53 within 7 years after the proposed activity is completed; and

(3) will not circumvent the requirements of this Chapter.

* * *

Environmental Buffer means a wetland, wetland buffer, 100-year floodplain, and a perennial or intermittent stream and stream buffer. An environmental buffer may also include a hydraulically connected steep slope and erodible soils.

[*Equestrian Facility*: Any building, structure, or land area that is primarily used for the care, breeding, boarding, rental, riding, sport eventing, or training of horses or ponies, the teaching of equestrian skills, or competitive equestrian events.]

* * *

Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. However, a minor [portions] portion of a forest stand which otherwise [meet this definition] qualifies may be less than 50 feet wide if [they exhibit] it exhibits the same character and composition as the overall stand. Forest includes:

- (1) [areas] any area that [have] has at least 100 live trees per acre with at least [50 percent] 50% of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; [and]
- (2) any forest [areas] area that [have] has been cut but not cleared[.]; and
- (3) any area where at least one layer is not present because of site conditions, pest predation, human impacts, or non-native species.

Forest does not include an orchard.

* * *

80 *Forest stand delineation* means the [evaluation] collection and presentation
81 of data on the existing vegetation in relation to the natural resources on a site
82 proposed for development or land disturbing [activities] activity.

83 * * *

84 *Lot* means [for the purpose of this Chapter] a [tract] single unit of land [, the
85 boundaries of which have been established as a result of a] created by deed
86 or [previous] subdivision [of a larger parcel, and which will not be the
87 subject of further subdivision, as defined under Section 50-1, without an
88 approved forest stand delineation and forest conservation plan].

89 * * *

90 *Medium-density residential area* means an area zoned for a density greater
91 than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per
92 40,000 square feet, including existing and planned development and
93 associated infrastructure, such as roads, utilities, and water and sewer
94 service.

95 * * *

96 *Natural Resource Inventory* means a collection of existing, natural, and
97 environmental information for a property and the surrounding area.

98 *Net tract area* means the total area of a tract, including both forested and
99 unforested areas, to the nearest 1/10 acre, reduced by road or utility rights-
100 of-way which are unrelated to and will not be improved as part of the
101 development application. However, in any agriculture [and] or resource
102 [areas] area, net tract area is the portion of the total tract for which land use
103 will be changed or will no longer be used for primarily agricultural
104 activities. For a linear project, net tract area is the area of a right-of-way
105 width or the limits of disturbance as shown on the development application,
106 whichever is greater.

* * *

Person means:

- (1) the federal government, the state, any county, [municipal corporation] municipality, or other political subdivision of the state, or any of their units[,];
- (2) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind[,]; or
- (3) any partnership, firm, common ownership community or other homeowners' association, public or private corporation, or any of their affiliates or subsidiaries[, or].
- [(4) any other entity.]

* * *

Qualified Professional means a person who meets all applicable requirements under Code of Maryland Regulations 08.19.06.01.

* * *

Retention means the deliberate holding and protecting of existing forest and trees [and other plants] on the site.

* * *

Stream buffer means a strip of land contiguous with and parallel to the bank of a perennial or intermittent stream.

Street tree means a tree either in the public right-of-way or immediately adjacent to a private street or roadway.

* * *

Tree Expert means person who meets all applicable requirements of Title 5, Subtitle 4 of the Natural Resources Article of the Maryland Code.

* * *

133 *Tract* means [the property subject to a development application or a
134 sediment control permit, as] one or more adjacent or confronting lots that are
135 described by deed or record plat.

136 * * *

137 *Tree [save plan] inventory* means [a plan prepared in conjunction with a
138 development application indicating where trees are to be retained or planted,
139 including the establishment of conservation areas] a collection of
140 information that documents the health and structural condition of individual
141 trees and assesses their suitability for preservation relative to probable
142 impacts from development or construction.

143 *Tree Protection Plan* means a plan indicating where trees must be retained
144 or planted, including specifications for tree preservation before, during, and
145 after construction.

146 * * *

147 **22A-4. [Applicability.] Persons Subject to the Forest Conservation Law.**

148 [Except as otherwise expressly provided in this Chapter, this Chapter applies
149 to:]

150 [(a) a person required by law to obtain development plan approval,
151 diagrammatic plan approval, project plan approval, preliminary plan
152 of subdivision approval, or site plan approval;]

153 [(b) a person required by law to obtain special exception approval or a
154 sediment control permit on a tract of land 40,000 square feet or larger,
155 and who is not otherwise required to obtain an approval under
156 subsection (a);]

157 [(c) a person who performs any cutting or clearing, or any other land
158 disturbing activity that would directly threaten the viability of, any
159 champion tree, wherever located;]

160 [(d) a government entity subject to mandatory referral on a tract of land
161 40,000 square feet or larger which is not exempt under subsection
162 22A-5(f);]

163 [(e) highway construction not exempt under subsections 22A-5(e) or (p);
164 and]

165 [(f) a public utility not exempt under subsections 22A-5(g), (o)(1) and (2),
166 or (p).]

167 [Any person who expects to cut, clear, or grade more than 5000 square feet
168 of forest or any champion tree, and who believes that the cutting, clearing, or
169 grading is exempt under Section 22A-5, 22A-6, 22A-7, or 22A-8, must notify the
170 Planning Director in writing before performing any cutting, clearing, or grading
171 and seek confirmation from the Director that the cutting, clearing, or grading is in
172 fact exempt from Article II. Failing to notify the Director as required by this
173 Section, or performing any cutting, clearing, or grading before the Director
174 confirms that an exemption applies, is a violation of this Chapter.]

175 [The Planning Director must notify the Department of Permitting Services if
176 this Chapter would apply to any cutting, clearing, or grading of which the
177 Department would otherwise not be notified.]

178 (1) (a) General. Any person who meets the criteria of this
179 Section is subject to this Chapter and must submit to either a
180 Level 1, Level 2, or Level 3 Review.

181 (b) Level 1 Review. A person must submit to a Level 1 Review if:

182 (1) the person is required by law to obtain approval for a
183 development plan, diagrammatic plan, project plan, preliminary
184 plan of subdivision, or site plan;

185 (2) the person is required by law to obtain a sediment control
186 permit or approval of a special exception on a tract of land

187 which is 40,000 square feet or larger, and is not otherwise
188 required to obtain an approval under subsection (b)(1);

189 (3) the person proposes to perform any cutting or clearing, or any
190 other land disturbing activity that would threaten the viability of
191 any champion tree, wherever located;

192 (4) the person is subject to mandatory referral or a park facility
193 plan on a tract of land which is 40,000 square feet or larger and
194 is not excluded under subsection (c) or (d);

195 (5) the person proposes highway construction not excluded under
196 subsection (c) or (d); or

197 (6) a public or private utility proposes a cumulative limit of
198 disturbance of 40,000 square feet or more for all stages of work
199 in a public right-of-way or utility easement.

200 (c) Level 2 Review. A person must submit to a Level 2 Review if the
201 person proposes:

202 (1) to build, on a single lot which is 40,000 square feet or larger, a
203 house, an addition to a house, or an accessory structure (such as
204 a pool, tennis court, or shed), if the activity does not result in
205 cutting, clearing, or grading:

206 (A) more than 40,000 square feet of forest;

207 (B) any forest in an environmental buffer;

208 (C) any forest on property located in a special protection area
209 which must submit a water quality plan;

210 (D) any specimen or champion tree; or

211 (E) any tree or forest that is subject to a previously approved
212 forest conservation plan or tree save plan;

- (2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a lot line adjustment, conversion of an existing recorded outlot, or joining 2 or more existing residential lots into one lot, if:
- (A) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); and
- (B) development does not result in cutting, clearing, or grading:
- (i) more than 40,000 square feet of forest;
- (ii) any forest in an environmental buffer;
- (iii) any forest on property located in a special protection area which must submit a water quality plan;
- (iv) any specimen or champion tree; or
- (v) any tree or forest that is subject to the requirements of a previously approved forest conservation plan or tree save plan;
- (3) a modification to existing non-residential developed property if less than 5,000 square feet of forest will be cleared; or
- (4) a State or County highway construction activity that is subject to either Section 5-103 of the Natural Resources Article of the Maryland Code or Level 1 Review.
- (d) Level 3 Review. A person must submit to a Level 3 Review if the person:
- (1) proposes an agricultural activity that is exempt from:
- (A) platting requirements under Section 50-9; and

(B) a requirement to obtain a sediment control permit under Section 19-2(c)(2).

An agricultural support building and related activity is excluded only if it is built and conducted using best management practices as defined by the Natural Resources Conservation Service;

(2) proposes a tree nursery;

(3) applies for a special exception for an existing structure and the proposed use will not result in clearing existing forest or trees;

(4) proposes a commercial logging and timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that has received:

(A) approval from the County Arborist or the Arborist's designee that the logging or timber harvesting plan is not inconsistent with County forest management objectives and is otherwise appropriate; and

(B) a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19. A person who qualifies under this subsection must provide a copy of each sediment control permit issued for commercial logging and timber harvesting operations to the Planning Director.

(5) proposes a government project reviewed for forest conservation purposes by the State Department of Natural Resources under state law;

- (6) conducts routine maintenance of public utility easements and rights-of-way, and routine maintenance of stormwater management facilities that are not subject to an existing conservation easement, except for clearing access roads;
- (7) conducts utility or other work required in an emergency;
- (8) conducts noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code; or
- (9) cuts or clears a public utility right-of-way or land for an electric generating station licensed under state law if a certificate of public convenience and necessity was issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code.

22A-5. [Exemptions] Reserved.

[The requirements of Article II do not apply to:]

- [(a) an activity conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:
- (1) does not require a special exception;
 - (2) does not result in the cutting, clearing, or grading of:
 - (A) more than a total of 40,000 square feet of forest;
 - (B) any forest in a stream buffer,
 - (C) any forest on property located in a special protection area which must submit a water quality plan,
 - (D) any specimen or champion tree, or
 - (E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and

292 (3) is subject to a declaration of intent filed with the Planning
293 Director stating that the lot will not be the subject of additional
294 regulated activities under this Chapter within 5 years of the
295 cutting, clearing, or grading of forest;]

296 [(b) an agricultural activity that is exempt from both platting requirements
297 under Section 50-9 and requirements to obtain a sediment control
298 permit under Section 19-2(c)(2). Agricultural support buildings and
299 related activities are exempt only if built using best management
300 practices;]

301 [(c) a tree nursery;]

302 [(d) (1) a commercial logging and timber harvesting operation,
303 including any harvesting conducted under the forest
304 conservation and management program under Section 8-211 of
305 the Tax-Property Article of the Maryland Code that:

306 (A) is completed before July 1, 1991, or is completed on or
307 after July 1, 1991, and the property on which the cutting
308 or clearing is conducted is not the subject of an
309 application for development within 5 years after the
310 sediment control permit has been issued;

311 (B) has received approval from the County Arborist or
312 designee that the logging or timber harvesting plan is not
313 inconsistent with County forest management objectives
314 and is otherwise appropriate; and

315 (C) has received a sediment control permit from the
316 Department of Permitting Services and posted the
317 required financial security under Chapter 19.

- (2) The Department of Permitting Services must send the Planning Director a copy of all sediment control permits issued for commercial logging and timber harvesting operations.
- (3) The requirements of this subsection apply to commercial logging and timber harvesting operations on agricultural land;]
- [(e) a State or County highway construction activity that is subject to Section 5-103 of the Natural Resources Article of the Maryland Code, or Section 22A-9;]
- [(f) a governmental project reviewed for forest conservation purposes by the State Department of Natural Resources under the Code of Maryland Regulations;]
- [(g) except for the clearing of access roads, routine maintenance of public utility easements and rights-of-way;]
- [(h) utility or other work that is of an emergency nature;]
- [(i) noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code;]
- [(j) a sediment control permit approved before July 1, 1991, or if amended after that date at the initiation of the permittee, that does not result in the cutting of more than 5,000 additional square feet of forest;]
- [(k) any lot covered by a preliminary plan of subdivision or site plan that did not receive a sediment control permit before July 1, 1991, and for which the preliminary plan of subdivision or site plan:
- (1) was approved before July 1, 1984, and has less than 40,000 square feet of forest cover; or
- (2) was approved or extended between July 1, 1984 and July 1, 1991, and

344 (3) the construction will not result in the cutting, clearing, or
345 grading of:

346 (A) any forest in a stream buffer, or

347 (B) any forest on property located in a special protection area
348 which must submit a water quality plan.

349 A preliminary plan of subdivision or site plan approved before July 1,
350 1991, that is revised after that date at the initiative of the applicant and
351 which results in the cutting of more than 5,000 additional square feet
352 of forest is not exempt. Development or redevelopment of a property
353 which requires resubdivision is not exempt. This subsection does not
354 apply to a planned unit development subject to subsection (1);]

355 [(l) any planned unit development for which a development plan was
356 approved by the District Council or for which a project plan was
357 approved by the Planning Board before January 1, 1992, and which
358 has received site plan approval before July 1, 1992 for the tract.
359 However, even if site plan approval has not been obtained before July
360 1, 1992, for the tract, the planned unit development is exempt if it is
361 75% or more complete on January 1, 1992, as measured by the total
362 acreage subject to the planned unit development that has received site
363 plan approval. A development plan or project plan amendment
364 approved after January 1, 1992, is not exempt if it results in the
365 cutting of more than 5,000 additional square feet of forest;]

366 [(m) a real estate transfer to provide a security, leasehold, or other legal or
367 equitable interest in a portion of a lot or parcel, if;

368 (1) the transfer does not involve a change in land use, or new
369 development or redevelopment, with associated land disturbing
370 activities; and

371 (2) both the grantor and grantee file a declaration of intent;]

372 [(n) any minor subdivision under Section 50-35A(a)(2)-(3) involving

373 conversion of an existing recorded outlot created because of

374 inadequate or unavailable sewerage or water service to a lot or joining

375 two or more existing residential lots into one lot, if:

376 (1) the only development located on the resulting lot is a single

377 family dwelling unit or an accessory structure (such as a pool,

378 tennis court, or shed); and

379 (2) development does not result in the cutting, clearing, or grading

380 of:

381 (A) more than a total of 40,000 square feet of forest,

382 (B) any forest in a stream buffer,

383 (C) any forest on property located in a special protection area

384 which must submit a water quality plan,

385 (D) any specimen or champion tree, or

386 (E) any tree or forest that is subject to the requirements of a

387 previously approved forest conservation plan or tree save

388 plan;]

389 [(o) The cutting or clearing of public utility rights-of-way or land for

390 electric generating stations licensed under Section 54A and 54B or

391 Section 54I of Article 78 of the Maryland Code, if:

392 (1) any required certificates of public convenience and necessity

393 have been issued in accordance with Section 5-1604(f) of the

394 Natural Resources Article of the Maryland Code; and

395 (2) the cutting or clearing of the forest is conducted so as to

396 minimize the loss of forest.]

397 [(p) the construction of a public utility or highway in a utility right-of-way
398 not exempt under subsection (o), or a highway right-of-way not
399 exempt under subsection (e), if:

- 400 (1) the right-of-way existed before July 1, 1992;
401 (2) forest clearing will not exceed a total of 40,000 square feet and
402 (3) the construction will not result in the cutting, clearing, or
403 grading of:
404 (A) any forest in a stream buffer,
405 (B) any forest on property located in a special protection area
406 which must submit a water quality plan,
407 (C) any specimen or champion tree, or
408 (D) any tree or forest that is subject to a previously approved
409 forest conservation or tree save plan;]

410 [(q) a special exception application if:

- 411 (1) the application is for an existing structure and the proposed use
412 will not result in clearing of existing forest or trees;
413 (2) the application modifies an existing special exception use
414 which was approved before July 1, 1991, and the revision will
415 not result in the clearing of more than a total of 5000 additional
416 square feet of forest or any specimen or champion tree; or
417 (3) the total disturbance area for the proposed special exception use
418 will not exceed 10,000 square feet, and clearing will not exceed
419 a total of 5000 square feet of forest or include any specimen or
420 champion tree;]

421 [(r) an equestrian facility located in an agricultural zone that is exempt
422 from platting requirements under Section 50-9, whether or not a
423 sediment control permit is obtained under Section 19-2. Article II

424 does not apply to any equestrian support building or related activity
425 only if the building is built using best management practices.
426 However, Section 22A-6(b) applies if any specimen or champion tree
427 would be cleared. This exemption does not permit any forest or tree
428 that was preserved under a previously-approved forest conservation
429 plan or tree save plan to be cut, cleared, or graded unless the
430 previously-approved plan is amended to allow that activity. This
431 exemption does not apply if:

- 432 (1) any forest was cleared during an agricultural activity, as defined
433 in subsection (b), during the 5 years before any exemption
434 under this subsection is claimed;
- 435 (2) any forest or tree located in a stream valley buffer would be
436 cleared;
- 437 (3) on-site forest retention does not equal at least 25% of the tract
438 area or all forest existing when the exemption is claimed,
439 whichever is less; or
- 440 (4) on-site forest retention does not equal at least 50% of any net
441 tract area when more than 50% of that tract is existing forest.

442 A conservation easement is not required for any equestrian facility,
443 whether or not the exemption in this subsection applies. However,
444 another type of long-term protection may be required under Section
445 22A-12(h)(2) if the facility includes any forest retention area. The
446 Planning Director must monitor any facility that is exempt under this
447 subsection to confirm that the applicant and any successor in interest
448 continue to comply with all conditions of the exemption;]

- 449 [(s) (1) an activity occurring on a tract of land less than 1.5 acres with
450 no existing forest, or existing specimen or champion tree, and

the afforestation requirements would not exceed 10,000 square feet; or

- (2) an activity occurring on a tract less than 1 acre that will not result in the clearing of more than a total of 30,000 square feet of existing forest, or any existing specimen or champion tree, and reforestation requirements would not exceed 10,000 square feet. Forest in any priority area on-site must be preserved; and]

[(t) a modification to existing developed property if:

- (1) no more than 5000 square feet of forest will be cleared;
- (2) the modification does not affect any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan; and
- (3) the modification does not require approval of a new subdivision plan.]

22A-6. [Exemptions-Special provisions] Reserved.

[(a) Special transition provision. An activity or development that is exempted under Section 22A-5, but which requires site plan approval, is subject to the local law applicable to tree conservation in effect before July 1, 1992. However, a violation of the requirements of any tree save plan or similar condition of approval may be enforced using any remedy provided under this Chapter.]

[(b) Tree save plan provision. An activity or development that would be exempt under Section 22A-5, except that the proposed activity involves clearing of a specimen or champion tree, requires the approval of a tree save plan, which may require tree preservation or mitigation for loss of individual trees. The plan requirements must be based on the size and character of the trees to be cleared. If trees to be

478 cleared are part of an existing scenic buffer between public parkland
479 and a proposed development, trees which are smaller than specimen
480 size may be included in the plan.]

481 **22A-7. [Activities or development not exempt under Section 22A-5 --**
482 **Special transition provision] Reserved.**

483 [(a) An activity or development not exempted under Section 22A-5 and
484 which received preliminary plan of subdivision approval, site plan
485 approval, project plan approval, or development plan approval,
486 including any amendments, between July 1, 1991 and July 1, 1992 is
487 exempt from the requirements of Article II at the time of a subsequent
488 sediment control permit application if:

489 (1) final plat approval has been obtained by July 1, 1992; or
490 (2) a substantively complete application for final plat approval
491 under Section 50-36 has been filed by July 1, 1992. If all other
492 requirements are met, the Planning Board must consider an
493 application to be substantively complete if the Board
494 determines that:

495 (A) any required approval or permit that has not been
496 obtained from another governmental agency is not
497 available solely because of the inaction by the other
498 governmental agency; and

499 (B) the applicant has used best efforts to obtain the permit or
500 approval.]

501 [(b) If final plat approval will not be required under subsection (a) of this
502 Section because the development is on a recorded lot or for other
503 reasons, the development will be subject to the requirements of this

Chapter at the time of any subsequent application for a sediment control permit.]

[(c) If the Planning Board finds that a development approval between July 1, 1991 and July 1, 1992 was consistent with the retention, afforestation, or reforestation standards of this Chapter but is not exempt under this Section, the Board may waive additional submission requirements at the time of any later sediment control permit application. However, the Board must not waive the provisions of Section 22A-12(g) and (h) requiring certain agreements and financial security.]

[(d) An amendment to a sediment control permit approved between July 1, 1991 and July 1, 1992 is subject to the requirements of Article II if the activity is not otherwise exempt and it will result in the cutting of an additional 5,000 square feet of forest.]

22A-8. [Utility lines] Reserved.

[(a) General.

(1) Except as provided in paragraph (2) of this subsection, this Section applies to a proposed land disturbing activity requiring a sediment control permit for the construction, reconstruction, or replacement of public utility lines (except water and sewer lines) within a public right-of-way, public utility easement, or a public utility right-of-way owned by the utility.

(2) This Section does not apply if a public utility easement will be located on the property of a development subject to Article II of this Chapter. Satisfaction of the regulatory requirements of that Article applicable to activities on the easement is the responsibility of the owner of the property.]

531 [(b) Calculation Rules; Exemption.

- 532 (1) To determine the applicability of this Chapter under Section
533 22A-4 to proposed activities within a public right-of-way or
534 public utility easement, the calculation of land area must be
535 based on the limits of disturbance as shown on the sediment
536 control permit.
- 537 (2) A public right-of-way, public utility easement, or privately
538 owned utility right- of-way is considered to be exempt under
539 Section 22A-5(o) if the proposed activity and any future stages
540 of the work on the utility line will not result in the cumulative
541 cutting, clearing, or grading of more than 40,000 square feet of
542 forest or the cutting, clearing, or grading of any specimen or
543 champion tree, or trees or forest that are subject to a previously
544 approved forest conservation or tree save plan. Any later stages
545 of the work must be identified at the time of the initial sediment
546 control permit application.
- 547 (3) If the exemption does not apply, afforestation or reforestation
548 requirements must be calculated using the net tract area
549 applicable to the entire proposed utility line without regard to
550 project segments subject to a specific sediment control permit.
551 The property boundaries of the privately owned utility right-of-
552 way, public utility easement, or public right-of-way (to the
553 extent of the utility work) must be used in calculating the area
554 of the tract. The net tract area should reflect any reduction in
555 land area that will continue to be used for agricultural
556 activities.]

557 [Any requirement for mitigation for loss of any specimen or champion tree
558 must be based on the size and character of the tree.]

559 **22A-9. County Highway Projects.**

560 (a) General.

561 (1) This [section] Section applies to construction of a highway by
562 the County as part of an approved Capital Improvements
563 Program project.

564 * * *

565 (c) Reforestation for County highway projects must meet the standards in
566 subsections [22A-12(e), (g) and (h)] 22A-12(c), (f), and (g).

567 * * *

568 **Article [III] 2. Natural Resource Inventory/Forest Stand Delineations, [and]**
569 **Forest Conservation Plans, Tree Inventories, and Tree Protection Plans.**

570 **22A-10. [General] Approvals required.**

571 (a) [Approval] Level 1 approval required. A person who is subject to
572 [this Article] Level 1 review must submit to the Planning Director a
573 [forest stand delineation and forest conservation plan] Natural
574 Resource Inventory/Forest Stand Delineation and Forest Conservation
575 Plan [for regulatory approval].

576 [(b) Forest Stand Delineation]

577 (1) Natural Resource Inventory/Forest Stand Delineation.

578 (A) A [forest stand delineation] Natural Resource
579 Inventory/Forest Stand Delineation must be [used during
580 the preliminary review process to find the most suitable
581 and practical areas for tree and forest conservation]
582 signed by a qualified professional. A [forest stand

delineation] Natural Resource Inventory/Forest Stand Delineation must contain:

- (i) topographic, hydrographic, soils, and geologic information [, and];
- (ii) qualitative and quantitative information on trees and forest cover[,]; and
- (iii) other information or requirements specified [in the regulations] by regulation or in the technical manual.

[(2) A simplified forest stand delineation may replace the forest stand delineation required by paragraph (1) if:

- (A) there is no forest on the site;
- (B) no forest on the site would be cut, cleared, or graded for the proposed use, and all forest on the site would be subject to a long-term protective agreement; or
- (C) the on-site forest is located on a portion of the tract which is exempt from this Article, such as areas remaining in agricultural use as part of a subdivision.]

[(3)] (B) The Planning Director may waive any requirement for information that is unnecessary for a specific site.

[(4)] (C) An approved [forest stand delineation] Natural Resource Inventory/Forest Stand Delineation is not valid after 2 years unless[:] a qualified professional recertifies the natural resource inventory/forest stand delineation, or [(A)] a [forest conservation plan] Forest Conservation Plan [has been] is accepted as complete[; or].

609 [(B) the delineation has been recertified by the
610 preparer.]

611 [(c)] (2) *Forest [conservation plan] Conservation Plan*.

612 [(1)] (A) [A forest conservation plan is intended to govern
613 conservation, maintenance, and any afforestation or
614 reforestation requirements which apply to the site.] A
615 [forest conservation plan] Forest Conservation Plan must
616 be signed by a qualified professional and must contain
617 information on the extent and characteristics of:

- 618 (i) the trees and forested area to be retained or
619 planted[,];
- 620 (ii) proposed locations for on-site and off-site
621 reforestation[,];
- 622 (iii) scheduling[,];
- 623 (iv) protective measures[,];
- 624 (v) a binding maintenance agreement effective for at
625 least [2] 5 years[,];
- 626 (vi) a binding agreement to protect forest conservation
627 areas, and other information or requirements
628 specified [in the] by [regulations] regulation or
629 technical manual.

630 [(2)] (B) A [forest conservation plan may] Forest Conservation
631 Plan must include protective measures designed to
632 conserve [significant and mature trees on adjacent
633 property] trees on the subject tract, or on adjacent
634 properties, from adverse impacts that may be caused by

the development or land disturbing activities proposed for the tract.

[(3)] (C) A [forest conservation plan] Forest Conservation Plan may be reviewed in 2 stages with the submission of a preliminary and a final [forest conservation plan] Forest Conservation Plan as specified under Section 22A-11.

(d) *Qualifications of preparer.* The forest stand delineation and forest conservation plan must be prepared by a licensed forester, licensed landscape architect or other qualified professional approved by the Planning Director. In determining if a person is qualified, the person must meet all applicable requirements under the Code of Maryland Regulations, 08.19.06.01.]

(b) Level 2 approval required. A person who is subject to Level 2 must submit to the Planning Director a Tree Inventory, Tree Protection Plan, and a Declaration of Intent.

(1) Tree Inventory.

(A) A Tree Inventory must be signed by a certified arborist or a tree expert, and must:

- (i) assess, identify, and characterize the tree species;
- (ii) estimate the height, age, and canopy of each tree;
- (iii) document the diameter of each tree; and
- (iv) provide any other information or requirement specified by regulation or in the technical manual.

(B) The Planning Director may waive any requirement for information that is unnecessary for a specific site.

(C) An approved Tree Inventory is not valid after 2 years unless a certified arborist or a tree expert recertifies the Tree Inventory or a Tree Protection Plan is approved.

(2) Tree Protection Plan

(A) A Tree Protection Plan must be signed by a certified arborist and used to protect trees during construction. A Tree Protection Plan must identify:

- (i) each tree to be retained and removed;
- (ii) the proposed limit of disturbance; existing and proposed utility connections;
- (iii) detailed drawings and measures to protect trees;
and
- (iv) any other information or requirement specified by regulation or in the trees technical manual.

(B) A Tree Protection Plan must include measures to protect trees on adjacent property from adverse impacts caused by the proposed development or land disturbing activity.

(3) Declaration of Intent.

(A) A Declaration of Intent must verify that the proposed activity does not require a Level 1 Review.

(B) Regulated activity must not occur on the area covered by the Declaration of Intent within 7 years after cutting, clearing, or grading any forest or tree resource is complete.

(C) The Planning Board may require a person who does not file or comply with a Declaration of Intent to:

- (i) submit to a Level 1 review; and

(ii) pay a penalty fee established by fee schedules approved by Council resolution per square foot of forest cut or cleared, not less than the minimum set by state law.

(c) Level 3 approval required.

(1) A person who is subject to Level 3 must submit to the Planning Director a Declaration of Intent.

(2) Declaration of Intent.

(A) A Declaration of Intent must verify that the proposed activity does not require a Level 1 or Level 2 Review.

(B) Regulated activity must not occur on the area covered by the Declaration of Intent within 7 years after cutting, clearing, or grading forest resources is complete.

(C) The Planning Board may require a person who does not file or comply with a Declaration of Intent to:

(i) submit to a Level 1 review; and

(ii) pay a penalty fee established by fee schedules approved by Council resolution per square foot of forest cut or cleared, not less than the minimum set by state law;

22A-11. [Application, review, and approval] Review Procedures.

(a) [General] Level 1 Review.

(1) Natural Resource Inventory/Forest Stand Delineation. A person subject to a Level 1 review must submit to the Planning Director a Natural Resource Inventory/Forest Stand Delineation. Within 30 days after receiving the Natural Resource Inventory/Forest Stand Delineation, the Director must

714 notify the person whether the Natural Resource
715 Inventory/Forest Stand Delineation is complete. An incomplete
716 application must be denied. If the Director does not act on the
717 submission within 30 days, the delineation must be treated as
718 approved. The Director may extend the deadline for an
719 additional 15 days in extenuating circumstances.

720 (2) Preliminary Forest Conservation Plan. After a person is
721 notified that the Natural Resource Inventory/Forest Stand
722 Delineation is approved, a person must submit a preliminary
723 forest conservation plan to the Planning Board or Planning
724 Director. The preliminary Forest Conservation Plan must be
725 reviewed with any application of which it is a necessary
726 component.

727 (3) Final Forest Conservation Plan.

728 (A) After the preliminary Forest Conservation Plan is
729 approved, a person must submit a final Forest
730 Conservation Plan concurrently with a site plan, record
731 plat, or sediment control plan, as applicable. The Plan
732 must be reviewed with the applicable site plan, record
733 plat, or sediment control plan.

734 (B) Within 45 days after receiving the final Forest
735 Conservation Plan, the Planning Director must notify the
736 applicant whether the Plan is complete and approved. If
737 the applicant is not notified within 45 days, the Plan must
738 be treated as approved. The Director may extend the
739 deadline for an additional 15 days in extenuating
740 circumstances.

741 (4) Coordination and Special Provisions.

742 [(1)] (A) Coordinated with project review. [The forest stand
743 delineation and forest conservation plan must be
744 submitted and reviewed in conjunction with the review
745 process for a development plan, project plan, preliminary
746 plan of subdivision, site plan, special exception,
747 mandatory referral, or sediment control permit in
748 accordance with this Section.] The Planning Director
749 must coordinate review of the forest conservation plan
750 with the Director of Environmental Protection, the
751 Director of Permitting Services, the Washington
752 Suburban Sanitary Commission, any other relevant
753 regulatory [agencies] agency, and [entities that will
754 provide] any public [utilities to] utility that will serve the
755 tract, to promote consistency between the objectives of
756 this Chapter and other development requirements. To the
757 extent practicable, [entities providing] public utilities
758 should design facilities that will serve a tract in a manner
759 that avoids identified conservation areas and minimizes
760 tree loss.

761 (B) Special exceptions. If a special exception application is
762 subject to this Chapter, the applicant must submit a Level
763 1, Level 2, or Level 3 review to the Planning Director
764 before the Board of Appeals may consider the application
765 for the special exception. The Board of Appeals must
766 review the preliminary forest conservation plan along
767 with the special exception application and must not

768 approve a special exception that conflicts with the
769 preliminary forest conservation plan. A final forest
770 conservation plan must be submitted before an applicant
771 obtains a sediment control permit, or when a preliminary
772 plan of subdivision or site plan application is filed, if
773 required.

774 (C) Sediment control permit. If an application for a sediment
775 control permit is subject to this Chapter, the applicable
776 permit issuing authority must direct the applicant to the
777 Planning Director for a determination. If the Planning
778 Director finds that the sediment control permit is subject
779 to this Chapter, the applicant must submit to the
780 applicable level of review. The sediment control permit
781 issuing authority must not approve a sediment control
782 permit that conflicts with an approved forest conservation
783 plan.

784 [(2)] (D) Modification to an approved plan. The Planning
785 Director may approve modifications to an approved
786 forest conservation plan that are consistent with this
787 Chapter if:

788 [(A)] (i) field inspections or other evaluation reveals
789 minor inadequacies of the plan and the
790 modification of the plan in order to remedy such
791 inadequacies will not negatively affect the final
792 approved plan; or

793 [(B)] (ii) each modification is minor and does not impact
794 any forest in a priority area (such as substituting an

on-site conservation area for an equal or greater
on-site area of similar character, or substituting a
marginal on-site conservation area for equal or
greater amount of off-site priority area); or
[(C)] (iii) action is otherwise required in an emergency
situation.

Any other modification must be approved by [the agency
that] either the Planning Board or the Planning Director,
whichever approved the [forest conservation plan] Forest
Conservation Plan.

[(b) Project requiring development plan, project plan, preliminary plan of
subdivision, or site plan approval.

(1) Forest stand delineation. The applicant must submit to the
Planning Director a forest stand delineation with the application
for a development plan, project plan, preliminary plan of
subdivision, or site plan, whichever comes first. Within 30 days
of receipt, the Planning Director must notify the applicant
whether the forest stand delineation is complete and correct. If
the Planning Director fails to notify the applicant within 30
days, the delineation will be treated as complete and correct.
The Planning Director may require further information or
provide for one extension of this deadline for an additional 15
days for extenuating circumstances.

(2) Forest conservation plan.

(A) Application. Upon notification that the forest stand
delineation is complete and correct, the applicant must
submit a forest conservation plan to the Planning

822 Director. If the development proposal will require more
823 than one of the approvals subject to this subsection, the
824 applicant must submit a preliminary forest conservation
825 plan to the Planning Director in conjunction with the first
826 approval and a final forest conservation plan in
827 conjunction with the last approval. If only one approval
828 subject to this subsection is required, an applicant, with
829 the approval of the Planning Board, may submit a
830 preliminary forest conservation plan at the time of the
831 development approval and a final forest conservation
832 plan before issuance of a sediment control permit for the
833 tract.

834 (B) Review. Within 45 days from receipt of a final forest
835 conservation plan, including a plan that is not reviewed
836 in 2 stages, the Planning Director must notify the
837 applicant whether the forest conservation plan is
838 complete and approved for submission to the Planning
839 Board as part of the development application. If the
840 applicant is not notified within 45 days, the plan will be
841 treated as complete and approved for submission. The
842 Planning Director may require further information or
843 provide for one extension of this deadline for an
844 additional 15 days for extenuating circumstances. In
845 addition, at the request of the applicant, the Director may
846 extend this deadline for extenuating circumstances.

847 (C) Condition of approval. The forest conservation plan will
848 be reviewed by the Planning Board concurrently with the

development plan, project plan, preliminary plan of subdivision or site plan, as appropriate. The forest conservation plan, as may be amended by the Board, must be made a condition of any approval of the development application. For a development plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-D-1.4.]

[(c) Project requiring special exception approval.

- (1) Forest stand delineation. If a special exception proposal is subject to the requirements of this Chapter, the applicant must submit a forest stand delineation to the Planning Director before the Board of Appeals may consider the application for the special exception. The deadlines for reviewing a forest stand delineation are the same as in paragraph (b)(1) of this Section.
- (2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a preliminary forest conservation plan to the Planning Director. The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception application and must not approve a special exception application that is in conflict with the preliminary forest conservation plan. A final forest conservation plan must be submitted before obtaining a sediment control permit, or at the time of preliminary plan of subdivision or site plan application, if required. The deadlines for reviewing a final forest

875 conservation plan are the same as in paragraph (d)(2) of this
876 Section.]

877 [(d) Project requiring a sediment control permit only.

878 (1) Forest Stand Delineation. If an application for a sediment
879 control permit may be subject to the requirements of this
880 Chapter, the applicable sediment control permit issuing
881 authority must direct the applicant to the Planning Director for
882 a determination. If the Planning Director finds the sediment
883 control permit application to be subject to this Chapter, the
884 applicant must submit a forest stand delineation to the Planning
885 Director for review. The deadlines for reviewing a forest stand
886 delineation are the same as in paragraph (b)(1) of this Section.

887 (2) Forest conservation plan. Upon notification that the forest stand
888 delineation is complete and correct, the applicant must submit
889 to the Planning Director a forest conservation plan. Within 45
890 days from receipt of the forest conservation plan, the Planning
891 Director must notify the applicant if the forest conservation
892 plan is complete and approved. If the applicant is not notified
893 within 45 days, the plan will be treated as complete and
894 approved. The Director may require further information or
895 provide for an extension of this deadline for an additional 15
896 days for extenuating circumstances. In addition, at the request
897 of the applicant, the Director may extend this deadline for
898 extenuating circumstances.

899 (3) Issuance of sediment control permit. A sediment control permit
900 must not be issued to a person who must comply with this
901 Article until:

902 (A) a final forest conservation plan, if required, is approved;
903 and

904 (B) any financial security instrument required under this
905 Chapter is provided.]

906 [(e) Project requiring mandatory referral.

907 (1) Forest stand delineation. A person seeking mandatory referral
908 for a project that is subject to the requirements of this Chapter
909 must first submit a forest stand delineation to the Planning
910 Director for review. The deadlines for reviewing a forest stand
911 delineation are the same as in paragraph (b)(1) of this Section.

912 (2) Forest conservation plan. Upon notification that the forest stand
913 delineation is complete and correct, the applicant must submit
914 to the Planning Director a preliminary forest conservation plan.
915 The Planning Board must consider the preliminary forest
916 conservation plan when reviewing the mandatory referral
917 application. The deadlines for reviewing the final forest
918 conservation plan are the same as in paragraph (d)(2) of this
919 Section.

920 (3) Issuance of a sediment control permit. Issuance of a sediment
921 control permit is subject to the conditions specified in
922 paragraph (d)(3) of this Section.]

923 (b) Level 2 Review. A person subject to a Level 2 review must submit to
924 the Planning Director the Tree Inventory with a Declaration of Intent.
925 Within 30 days after receiving the Tree Inventory and Declaration of
926 Intent, the Planning Director must notify the person whether the Tree
927 Inventory is complete. An incomplete application must be denied. If
928 the Planning Director fails to act on the submission within 30 days,

the Tree Inventory will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

- (c) Level 3 Review. A person subject to a Level 3 review must submit to the Planning Director a Declaration of Intent. Within 30 days After receiving the Declaration of Intent, the Planning Director must notify the person whether the Declaration of Intent is complete. An incomplete application must be denied. If the Planning Director fails to act on the submission within 30 days, the Declaration of Intent will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

22A-12. Retention, afforestation, and reforestation requirements for Level 1 Review.

- (a) [Table.] General. The Forest Conservation Plan must, to the maximum extent feasible, retain certain vegetation and specific areas in an undisturbed condition, unless the Planning Board or the Planning Director finds retention is not feasible without undesirable alterations to the proposal. The Forest Conservation Plan must mitigate for the loss of forest and trees in the following order of preference:

- (1) on site reforestation or afforestation;
- (2) offsite forest planting within the same watershed;
- (3) on site non-native and invasive management control with supplemental planting;
- (4) forest mitigation banks;
- (5) in-lieu fee; and
- (6) on site landscaping with an approved plan.

(b) How to Calculate the Requirements.

(1) Table.

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area for <u>Level 1</u> Reviews</i>		
<i>Land Use [Category] <u>Type</u>^[1]</i>	<i>[Forest] Conservation Threshold</i>	<i>[Required] Afforestation Threshold</i>
Agricultural and Resource Areas	50%	20%
Medium Density Residential Areas	[25%] <u>30%</u>	[20%] <u>25%</u>
Institutional Development Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
High Density Residential Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
Mixed-use Development Areas	[15-20% ²] <u>20-25%¹</u>	[15%] <u>20%</u>
Planned unit Development Areas	[15-20% ²] <u>20-25%¹</u>	[15%] <u>20%</u>
Commercial and Industrial Areas	[15] <u>20%</u>	[15%] <u>20%</u>

The residential and institutional portions of the tract must meet the [20%] 25% requirement. All other uses must meet the 20% requirements. [If a planned unit development was initially approved before January 1, 1992, and is between 25% and 75% complete on July 1, 1992, (as measured by the total acreage subject to the planned unit development that has received site plan approval), the forest conservation threshold is calculated at 15 per cent. If the planned unit development is less than 25% complete, the forest conservation threshold is calculated using the adjustment shown in the chart.]

[(b) Retention.

- (1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan

must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:

- (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;
- (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and
- (C) the development proposal cannot be reasonably altered.

(2) In general, areas protected under this subsection include:

- (A) floodplains, stream buffers, steep slopes, and critical habitats;
- (B) contiguous forests;
- (C) rare, threatened, and endangered species;
- (D) trees connected to an historic site;
- (E) champion trees and other exceptionally large trees; and
- (F) areas designated as priority save areas in a master plan or functional plan.]

[(c)] (2) *Reforestation*. The forest conservation plan must provide for reforestation as follows:

- [(1)] (A) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.
- [(2)] (B) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of

forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

[(3)] (C) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

[(4)] (D) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

[(d)] (3) *Afforestation.*

[(1)] (A) A site with less than 20 percent of the net tract area in forest cover must be afforested in accordance with the required afforestation percentages shown on the table in subsection [(a)] (b)(1) of this Section.

[(2)] (B) Afforestation [should] must be accomplished by the planting, maintenance, and establishment of forest cover[. However, if the applicant] unless a person demonstrates to the satisfaction of the Planning Board or Planning Director, as the case may be[, that afforestation using forest cover is inappropriate]. Afforestation may be satisfied by tree cover for a site because of its location in an urban setting, redevelopment context, high-density

residential, commercial, industrial, planned unit development, or institutional area (as defined in Section 22A-3), or similar reason, afforestation requirements may be satisfied by tree cover.

[(e)] (c) *Standards for reforestation and afforestation.*

(1) Priorities for reforestation and afforestation.

(A) [Preferred sequence.] Except as provided [in] by regulation or in the technical manual or otherwise in [paragraph] (1) of this subsection, the preferred sequence for afforestation and reforestation is [, in general: enhancement of existing forest through on-site selective clearing, supplemental planting, or both; on-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible; landscaping with an approved plan; and off-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible] identified in subsection (a).

(B) [Governmental] Government considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

(i) to achieve the objectives of a master or sector plan or other County land use policies or to take

- 1050 advantage of opportunities to consolidate forest
1051 conservation efforts;
- 1052 (ii) for public [site] sites acquired or required to be
1053 dedicated before July 1, 1991, to ensure that the
1054 site can be used for its intended purpose without
1055 major design changes; or
- 1056 (iii) for educational, recreational, and public safety
1057 facilities, to ensure that public safety is not
1058 compromised.
- 1059 [(C) *Public Utility Considerations*. The sequence provided in
1060 subparagraph (A) of this paragraph for public utility
1061 projects may be modified to reflect applicable electrical
1062 or other safety codes, or right-of-way constraints.]
- 1063 (2) *Off-site afforestation and reforestation*. In addition to the use
1064 of other sites proposed by an applicant and approved by the
1065 County, off-site afforestation or reforestation may also include:
- 1066 (A) Forest mitigation banks designated in advance by the
1067 County.
- 1068 (B) Protection of existing off-site forest. Acquisition of an
1069 off-site protective easement for existing forested areas
1070 not currently protected is an acceptable mitigation
1071 technique instead of off-site afforestation or reforestation
1072 planting, but the forest cover protected must be 2 times
1073 the afforestation and reforestation requirements.
- 1074 (C) For sites located in existing population centers, [use of]
1075 street trees [which meet landscape or streetscape goals
1076 identified in an applicable master plan] may be used if

the applicant demonstrates to the satisfaction of the Planning Board or Planning Director that on-site afforestation is inappropriate.

[(3) *Priority areas and plantings.* Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred. Unless the Planning Board or Planning Director order otherwise, the required use of natural regeneration under this Chapter supercedes any prohibition under Chapter 58.]

[(4) *Location requirements.* Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located.]

[(5) *Deadline for plant installation.* The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.]

[(6)] (d) *Planned Unit Developments; Other Staged Development.* Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan or project plan instead of

the net tract area. Similarly, the Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total area covered by the preliminary plan of subdivision.

[(f)] (e) *Special provisions for minimum retention, reforestation and afforestation.*

(1) *General.* Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.

(2) *Retention, reforestation and afforestation.* Forest retention should be maximized where possible on each site listed in this subsection. At a minimum, on-site forest retention, and in some cases reforestation and afforestation, must be required as follows:

(A) In an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.

(B) In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a). This requirement also applies to any site seeking a

1131 waiver or variance from base zone standards under
1132 Section 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-
1133 1.621, or 59-C-7.131, if as a condition of the waiver or
1134 variance the Planning Board or County Council must find
1135 that the resulting development is environmentally more
1136 desirable.

1137 (C) On a site covered by this subsection, if existing forest is
1138 less than the minimum required retention, all existing
1139 forest must be retained and on-site afforestation up to the
1140 minimum standard must be provided. If existing forest is
1141 less than the applicable afforestation threshold in
1142 subsection [(a)] (b), the afforestation threshold is the
1143 minimum on-site forest requirement.

1144 (D) If a site covered by this subsection is unforested, on-site
1145 afforestation must equal the applicable afforestation
1146 threshold.

1147 [(3)] (E) If the Planning Board or Planning Director, as
1148 appropriate, finds that forest retention required in this
1149 subsection is not possible, the applicant must provide the
1150 maximum possible on-site retention in combination with
1151 on-site reforestation and afforestation, not including
1152 landscaping and street trees.

1153 [(4)] (F) Retention, reforestation, and afforestation must adhere
1154 to the priorities and sequence established in subsections
1155 [(b) and (e)] (a) and (c).

1156 [(g)] (f) *In lieu fee*.

1157 (1) *General.* If a person satisfactorily demonstrates that the
1158 requirements for reforestation or afforestation on-site or off-site
1159 cannot be reasonably accomplished, the person must contribute
1160 money to the forest conservation fund at a rate specified by the
1161 County Council by law or resolution, but not less than the rate
1162 required under Section 5-1610 of the Natural Resources Article
1163 of the Maryland Code. The requirement to contribute money
1164 must be met before any clearing or grading occurs within [90
1165 days after development project completion] the tract.

1166 (2) *Specific development situations.* Except as specified in
1167 subsection [(f)] (e), the Planning Board or Planning Director
1168 may allow an applicant to pay into the County Forest
1169 Conservation Fund instead of providing afforestation[,]or
1170 reforestation[, or landscaping] in the following situations:

1171 (A) *Afforestation using tree cover.* If an applicant has shown
1172 that on-site afforestation using forest cover is not
1173 appropriate under subsection [(d)(2)] (b)(3)(B), the
1174 applicant may pay the fee instead of using tree cover to
1175 meet any afforestation requirement.

1176 (B) *Afforestation or reforestation using [landscaping] tree*
1177 *cover.* An applicant may pay the fee instead of using
1178 credit for [landscaping] tree cover.

1179 * * *

1180 [(h)] (g) Agreements and Long-Term Protection.

1181 (1) Maintenance agreement. A forest conservation plan must
1182 include a [two] 5-year binding agreement for maintenance of
1183 conservation areas, including the watering (as practical),

feeding, [and] replanting of areas to be afforested or reforested,
and non-native and invasive management. The [2-year] 5-year
period starts upon satisfactory final inspection of the
conservation measures required under the [forest conservation
plan] Forest Conservation Plan. A staged project may have
more than one agreement.

* * *

[(i)] (h) *Financial Security*.

(1) *Security required*. Except as provided in paragraph (8) of this
subsection, an approved financial security instrument must be
required to ensure:

- (A) compliance with all requirements of an approved forest
conservation plan including afforestation, reforestation,
and maintenance; [or]
- (B) full payment of funds to be paid instead of afforestation
or reforestation, if required under subsection [(g).] (f); or
- (C) compliance with all requirements of a Tree Protection
Plan.

* * *

(3) *When required*. The financial security instrument must be
provided prior to any land disturbing activity [, as defined in
Chapter 19, occurring on a section of the tract subject to the
forest conservation plan].

(4) *Amount required*.

- (A) If the financial security is required under [subparagraph]
subsection (1)(A) [of this subsection], the security
instrument must be in an amount equal to:

- 1211 (i) the in lieu fee rate; or
1212 (ii) the estimated cost of afforestation, reforestation,
1213 and maintenance [applicable to the section of the
1214 tract subject to the land disturbing activity] of
1215 planted areas as well as non-native and invasive
1216 management.

1217 The instrument must include a provision for adjusting the
1218 amount based on actual costs. The Planning Director
1219 must notify the obligee of any proposed adjustment and
1220 provide the opportunity for an informal conference.

- 1221 (B) If the financial security is required under [subparagraph]
1222 subsection (1)(B) [of this subsection], the security
1223 instrument must be in an amount equal to the in lieu
1224 payment.

1225 * * *

- 1226 (6) Events of forfeiture. The financial security instrument may be
1227 subject to forfeiture on:

- 1228 (A) failure of the obligee to perform the work under the
1229 [forest conservation plan] Forest Conservation Plan in
1230 accordance with the required schedule; or

- 1231 (B) failure of the obligee to pay a required in lieu fee in a
1232 timely manner.

1233 * * *

1234 **22A-13. Forest mitigation banks.**

- 1235 (a) A person may create a forest mitigation bank from which applicants
1236 may buy credits by afforesting or reforesting an area of land under a
1237 forest mitigation bank plan approved by the Planning Director.

(b) A person can create a forest mitigation bank by permanently protecting:

(1) existing forest;

(2) planting and protecting new forests in unplanted environmental buffers or in areas contiguous to existing and protected forests;
or

(3) a combination of the two.

[(b)] (c) The area of land where the bank is planted must be at least 1 acre.

[(c)] (d) A forest mitigation bank must use native plants for afforestation and reforestation[, unless inappropriate].

[(d)] (e) A person proposing to create a forest mitigation bank must submit a plan to the Planning Director, [which must include] that includes:

(1) a [2-year] 5-year maintenance agreement which meets the standards in subsection [22A-12(h)(1)] 22A-12(g)(1);

(2) all information required by subsection [22A-10(c)] 22A-10(b)(2) for a [forest conservation plan] Forest Conservation Plan; and

(3) the draft easement, covenants, or deed restrictions for the area to be sold to the developer when credits are withdrawn from the bank.

[(e)] (f) Forest mitigation banks must be established in accordance with the priority areas described in subsection [22A-12(e)(3)] 22A-12(b)(2), or in areas identified in a master plan or functional plan.

[(f)] (g) Credits must not be debited from a forest mitigation bank until all trees have been planted and accepted by the Planning Director, and either financial security which meets the standards in subsection [22A-12(i)] 22A-12(h) has been provided or the Planning Director has

found that a sufficient number of trees have successfully survived for [2] 5 years after planting.

[(g)] (h) To debit credits from an approved forest mitigation bank, the easement, covenants, or deed restrictions which assure that the newly reforested or afforested area of land remains a forest in perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show that credits are available and the applicant has the right to debit them. The credits must buy an amount of land equal to the applicant's off-site reforestation or afforestation requirements under its approved forest conservation plan.

22A-15. Inspections and notification.

(a) *Permission to gain access.* [Authorized representatives of the Planning Department] Representatives authorized by the Planning Director may enter properties subject to this Chapter for the purpose of inspection, review and enforcement.

(b) *Forest Conservation Plan to be on site; field markings.* A copy of the approved forest conservation plan must be available on the site for inspection by [authorized] representatives authorized by the Planning Director. Field markings must exist on site during installation of all protective devices, construction, or other land disturbing activities.

(c) *Required inspections.*

(1) The Planning Department [should] must conduct [at least 3] field inspections of a site subject to confirm the information submitted on a Natural resource Inventory/Forest Stand Delineation.

(2) The Planning Department must conduct field inspections of a site [tract] subject to an approved [forest conservation plan]

1292 Forest Conservation Plan[. The inspections should take place]
1293 as follows:

- 1294 [(1) The first inspection should take place before any land
1295 disturbing activities (including clearing, grading, or stripping)
1296 occurs on the tract to determine if protective measures have
1297 been properly installed and conservation areas clearly marked;
- 1298 (2) The second inspection should take place following completion
1299 of all land disturbing activities and afforestation or reforestation
1300 to determine the level of compliance with the forest
1301 conservation plan; and
- 1302 (3) The third inspection should take place at the end of the
1303 maintenance agreement 2-year time period.]
- 1304 (A) after the limits of disturbance have been staked and
1305 flagged, but before any clearing or grading begins;
- 1306 (B) after necessary stress reduction measures have been
1307 completed and the protection measures have been
1308 installed, but before any clearing or grading begins;
- 1309 (C) after completion of all construction activities to
1310 determine the level of compliance with the provisions of
1311 the forest conservation plan;
- 1312 (D) before the start of any required reforestation and
1313 afforestation planting;
- 1314 (E) after required reforestation and afforestation planting has
1315 been completed to verify the planting is acceptable and
1316 begin the 5-year maintenance period; and
- 1317 (F) at the end of the 5-year maintenance period to determine
1318 the level of compliance with the provisions of the

1319 planting plan and, if appropriate, authorize release of the
1320 financial security.

1321 (3) The Planning Department must conduct field inspections of a
1322 site subject to a tree protection plan as follows:

1323 (A) after the limits of disturbance have been staked and
1324 flagged, but before any clearing or grading begins;

1325 (B) after necessary stress reduction measures have been
1326 completed and the protection measures have been
1327 installed, but before any clearing or grading begins; and

1328 (C) after completion of all construction activities to
1329 determine the level of compliance with the provisions of
1330 the tree protection plan.

1331 (d) *Other inspections.* The Planning [Department] Director may [conduct
1332 other] authorize additional inspections or meetings as necessary to
1333 administer this Chapter[, including an inspection to confirm a forest
1334 stand delineation].

1335 (e) *Required [notifications] scheduling of inspections for Forest*
1336 *Conservation and Tree Protection Plans.* Persons must notify the
1337 Planning Director 7 days prior to scheduling inspections under
1338 subsection (c).

1339 [(1) At least 2 working days before starting any land disturbing
1340 activities associated with the forest conservation plan, a person
1341 must notify the Planning Department. The Planning Department
1342 must coordinate its inspections, and any pre-construction
1343 conferences, with the Department of Permitting Services to
1344 avoid inconsistent directives in the field relating to the forest
1345 conservation plan and sediment control activities.

(2) At least 2 working days before completion of afforestation and reforestation plantings, a person must notify the Planning Department so that the Department may schedule the second inspection specified under paragraph (c)(2) of this Section.]

22A-16. [Penalties] Violations, penalties, and other remedies.

* * *

22A-17. Corrective [actions] order.

* * *

22A-19. [Noncompliance with exemption conditions] Reserved.

[(a) Determination of noncompliance. A person who receives an exemption subject to a declaration of intent or for commercial logging and timber harvesting operations is in noncompliance if:

- (1) within 5 years, an application for a development or other approval regulated by this Chapter is submitted for the tract or lot covered by the exemption; or
- (2) the person otherwise violates this Chapter or the declaration of intent.]

[(b) Penalties for noncompliance. In addition to any other remedies under this Chapter, the Planning Board may require a person in noncompliance to:

- (1) meet the forest conservation threshold as would have been required;
- (2) pay an administrative civil penalty under Section 22A-16(d) for the area of forest cut or cleared under the exemption; or
- (3) both.

22A-20. [Notice, hearings, and appeals] Appeals.

- 1372 [(a) General. Except as provided under subsections (c) and (d) of this
1373 Section, the requirements for notice, public hearing, and
1374 administrative decision-making for the associated development
1375 approval must be followed when reviewing a forest stand delineation
1376 or forest conservation plan.]
- 1377 [(b) Forest conservation plans and variances approved by the Planning
1378 Board or District Council.
- 1379 (1) A person aggrieved by the decision of the Planning Board on
1380 the approval, denial, or modification of a forest conservation
1381 plan (including a request for a variance) may file a judicial
1382 appeal of the final administrative action on the development
1383 approval in accordance with Subtitle B of the Maryland Rules
1384 of Procedure and any other law applicable to the proceeding.
- 1385 (2) A person aggrieved by the decision of the District Council on
1386 the approval, denial, or modification of a forest conservation
1387 plan (including a request for a variance) proposed in
1388 conjunction with a development plan may file a judicial appeal
1389 of the action on the development plan in accordance with
1390 Division 59-H-8.]
- 1391 [(c) Forest stand delineations and forest conservation plans approved by
1392 the Planning Director.
- 1393 (1) Appeal to Planning Board. Upon receipt of the Planning
1394 Director's written decision on a forest stand delineation or forest
1395 conservation plan, an applicant has 30 days in which to appeal
1396 to the Planning Board.
- 1397 (2) Hearing; decision. The Planning Board must hold a hearing on
1398 the appeal and inform the applicant in writing of its decision.

The Board must consider the appeal de novo. For purposes of judicial review, the decision of the Planning Board constitutes final agency action.

- (3) Appeal. Upon receipt of the Planning Board's decision, an applicant has 30 days in which to appeal the decision in accordance with Subtitle B of the Maryland Rules of Procedure.]

[(d) Administrative enforcement actions.

- (1) Notice. A complaint, order, or other administrative notice issued by the Planning Director under this Article must be served on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address. The notice must identify the alleged violator, the location of the violation, and the specific facts of the violation, and must give the alleged violator the opportunity for a hearing before the Planning Board within 10 working days of receipt of the notice. If an administrative action under this Article can only be taken by the Board, the notice must state the date on which the action is scheduled to be considered by the Board.

- (2) Hearing. If an opportunity for a hearing is requested, the matter must be expeditiously scheduled on a Planning Board agenda unless the alleged violator consents to a delay. The filing of a request for a hearing does not stay an administrative order to stop work, stabilized a site, or stop a violation.

- (3) Decision. The Planning Board must inform the alleged violator in writing of its decision on an administrative enforcement

1426 action. The Board's decision constitutes final agency action for
1427 purposes of judicial review.

1428 (4) Appeal. Upon receipt of the Planning Board's decision, an
1429 aggrieved person has 30 days in which to appeal the Board's
1430 action in accordance with Subtitle B of the Maryland Rules of
1431 Procedure.]

1432 (a) Natural Resource Inventory/Forest Stand Delineations and Forest
1433 Conservation or Tree Protection Plans approved by the Planning
1434 Director.

1435 (1) Appeal to Planning Board. An applicant has 30 days from the
1436 date of the Planning Director's written decision on a Natural
1437 Resource Inventory/Forest Stand Delineation or Forest
1438 Conservation or Tree Protection Plan to appeal to the Planning
1439 Board.

1440 (2) Hearing; decision. The Planning Board must hold a de novo
1441 hearing. The Board must issue a written resolution to the
1442 applicant setting forth its decision. For purposes of judicial
1443 review, the decision of the Planning Board constitutes final
1444 agency action. Applicants may petition for judicial review of
1445 the Planning Board decision in accordance with Maryland
1446 7-200 Rules.

1447 (b) Forest Conservation or Tree Protection Plans and variances
1448 approved by the Planning Board. A person aggrieved by the decision
1449 of the Planning Board on the approval, denial, or modification of a
1450 Forest Conservation or Tree Protection Plan (including a request for a
1451 variance) may file a petition for judicial review of the administrative
1452 agency decision on the development approval in accordance with the

Maryland Rules of Court and any other law applicable to the proceeding.

Sec. 22A-21. Variance provisions.

(a) *Written request.* [A person] An applicant may request in writing a variance from this Chapter or any regulation adopted under it if the person demonstrates that enforcement would result in unwarranted hardship to the person. A request for a variance [waives] suspends the time requirements in Section 22A-11 until the Planning Board has acted upon the request.

* * *

(c) *Referral to other agencies.* Before considering a variance, the Planning Board must refer a copy of each request to the County Arborist, Planning [Department] Director, and other appropriate officials or agencies for a written recommendation before acting on the request. Recommendations must be submitted to the Planning Board within 30 days from the receipt [by the official or agency] of the [request] referral or the recommendation [should] must be presumed to be favorable.

(d) *Minimum criteria.* A variance may only be granted if it meets the provisions of subsection (a) and (b) above. A variance must not be granted if granting the request:

- (1) will confer on the applicant a special privilege that would be denied to other applicants;
- (2) is based on conditions or circumstances which are the result of the actions by the applicant;
- (3) arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

(4) will violate State water quality standards or cause measurable degradation in water quality.

(e) *Approval procedures; Conditions.* The Planning Board[, or the District Council on a development plan,] must [make findings] find that the applicant has met all requirements of this Section before granting a variance. Appropriate conditions may be imposed to promote the objectives of this Chapter and protect the public interest.

(f) *Notice to State Department of Natural Resources; Right to initiate or intervene in proceedings.*

(1) Notice of a pending variance request must be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.

(2) The Department of Natural Resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance.

22A-26. [Regulations] General.

(a) [Adoption] Regulations. The Planning Board must adopt regulations, including necessary procedures, to administer this Chapter. In adopting the regulations, the Board must follow the adoption procedures for a Method (2) regulation under Section 2A-15 and any requirements applicable under State law. However, a proposed regulation of a procedural nature or that would implement changes in State law or regulation, may be adopted under Method (3) if it is consistent with this Chapter. The regulations must include procedures to amend a forest conservation plan and a declaration of intent.

(b) *Technical manual.* The Planning Director must prepare a technical manual that must include guidance and methodologies for:

- 1507 (1) preparing and evaluating a [forest stand delineation and natural
1508 resource inventory] Natural Resource Inventory/Forest Stand
1509 Delineation;
- 1510 (2) preparing and evaluating a [forest conservation plan] Forest
1511 Conservation Plan, including priorities for forest retention,
1512 reforestation, and afforestation, and a recommended tree
1513 species list;
- 1514 (3) preparing and evaluating a Tree Inventory and Tree Protection
1515 Plan;
- 1516 [(3)] (4) providing forest or tree protective measures during and after
1517 clearing or construction, including planting, tree relocation, and
1518 maintenance;
- 1519 [(4)] (5) inspection and monitoring [and enforcement] of site for
1520 compliance with [forest conservation plans] Forest
1521 Conservation and Tree Protection Plans; and
- 1522 (6) other appropriate guidance for program requirements consistent
1523 with this Chapter and the regulations.

1524 [(c) *Development agreements; Conservation easements.* The Planning
1525 Board may in the regulations require developer agreements,
1526 conservation easements, land trusts, covenants, and deed restrictions
1527 as part of an approved forest conservation plan.]

1528 [(d)] (c) *Administrative fee.* The Planning Board must [charge] establish a
1529 fee [to cover] schedule that at least partially covers the costs of
1530 administering this Chapter[, including review of submittals and field
1531 inspections. The fee schedule must be set by the Planning Board as
1532 part of the development application process. Different fees may be set

based on the size of the tract or other relevant factors]. Fee schedules may be reviewed as needed.

[(e) *Additional regulations.* Notwithstanding any other provision of this Chapter, the Planning Board may, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation and allow modified application submissions or procedures for development projects of a minor scale or public utility projects.]

[(f)] (d) *Reports.* The Planning Board must make all reports on the County forest conservation program to the General Assembly and State Department of Natural Resources that are required under State law or regulation. The reports [should be reviewed by the County Arborist for comment, and copies of all final reports] must be transmitted to the County Council and County Executive.

[(g)] (e) *List of Off-Site Property for Mitigation.* The Planning Director [should] may develop and maintain a list of properties [that may be] suitable for off-site mitigation required under [forest conservation plans] Forest Conservation Plans. [The Planning Director should develop the list in coordination with the County Arborist, the Department of Environmental Protection, the Department of Public Works and Transportation, the Department of Economic Development, the Soil Conservation District, and other appropriate agencies.]

[(h) *Sediment Control Permit Applications.* The Planning Director and the Director of the Department of Environmental Protection should develop administrative procedures to prevent, to the extent possible, circumvention of this Chapter by a person who obtains a sediment control permit for land disturbing activities on less than 40,000 sq. ft.

of land and who later seeks preliminary plan of subdivision approval for the same land. These procedures may include requiring an applicant for a sediment control permit to submit a declaration of intent enforceable under Section 22A-19.]

22A-27. Forest conservation fund.

There is a County forest conservation fund. Money deposited into the [fund] Fund must be used in accordance with the adopted County budget and in accordance with the following:

(a) *In lieu fees.* Money deposited in the [forest conservation fund instead of planting] Forest Conservation Fund must be spent on the reforestation and afforestation for which the money is deposited, including costs directly related to site identification, acquisition, design, and preparation, and must not revert to the [general fund] General Fund. The permanent preservation of priority forests, including identification and acquisition of a site, may be substituted for reforestation and afforestation at a rate of 2 acres of forest preservation for each acre of planting required. Funds remaining after all reforestation and afforestation requirements are satisfied may be spent on any other tree conservation activity, including street tree planting.

(b) *Penalties.* Money collected for noncompliance with a [forest conservation plan] Forest Conservation Plan or the associated [2-year] 5-year maintenance agreement must be deposited in a separate account in the [forest conservation plan] Forest Conservation Plan and must not revert to the General Fund. Money deposited in this [fund] Fund may be used to administer this Chapter or any purpose set forth in the Fund.

[Article V. County Arborist.]

[22A-30. County Arborist.] Reserved.

[(a) *Appointment.* The Director of the Department of Environmental Protection must appoint a person to serve as County Arborist. The County Arborist functions within the Department of Environmental Protection.]

[(b) *Qualifications.* The County Arborist must have relevant experience and an advanced degree in horticulture, forestry, forest ecology, plant pathology, landscape architecture, or other related field, or an equivalent combination of education and experience. The County Arborist should be licensed as a tree expert under State law.]

[(c) *Duties.* The County Arborist has the following functions related to resource management and protection of forest and trees in the County:

- (1) develop a comprehensive County conservation and management strategy, including programs designed to promote afforestation and reforestation in the County, and the survival of historic trees and any endangered tree species;
- (2) advise the County Executive and County Council on the effectiveness of County programs for controlling tree pests and diseases;
- (3) review and approve proposed commercial logging and timber harvesting operations under Article II;
- (4) review variance requests and reports under Article II;
- (5) provide liaison with citizens and businesses on forest and tree conservation issues and develop appropriate mechanisms for public input on conservation strategies; and

(6) any other duties required by law or assigned by the County Executive.]

[22A-31. Forest Conservation Advisory Committee] Reserved.

[(a) *Definition.* In this section "Committee" means the Forest Conservation Advisory Committee.]

[(b) *Established.* The County Executive must appoint, subject to confirmation by the County Council, a Forest Conservation Advisory Committee.]

[(c) *Composition and terms of members.*

(1) The Committee has 15 public members. The public members should include:

(A) Landscape architects;

(B) Arborists and urban foresters;

(C) Horticulturists and representatives from the nursery industry;

(D) Persons directly engaged in agriculture;

(E) Persons directly involved in the building industry;

(F) Members of citizen groups;

(G) Member of environmental an conservation organizations; and

(H) Representatives of public utility companies.

(2) The Executive must designate a staff member from each of the following departments to serve as an ex officio member;

(A) Economic Development;

(B) Environmental Protection; and

(C) Public Works and Transportation.

1639 (3) The Executive must invite a representative from each of the
1640 following agencies to serve as an ex officio member;

1641 (A) The County Planning Board; and

1642 (B) The Washington Suburban Sanitary Commission.

1643 (4) The term of each member is 3 years and expires on December
1644 31. After an appointment to fill a vacancy before a term
1645 expires, the successor serves the rest of the unexpired term.]

1646 [(d) *Voting, officers, meetings, and compensation.*

1647 (1) All members of the Committee are voting members.

1648 (2) Each January, the Executive may designate a chair and vice-
1649 chair from among the Committee's public members to serve a
1650 1-year term. If the County Executive does not designate a chair
1651 or vice-chair by February 15, the Committee members must
1652 select a chair and vice-chair.

1653 (3) The Committee meets at the call of the Chair. The Committee
1654 must meet as often as necessary to perform its duties, but not
1655 less than 9 times a year.

1656 (4) A member must serve without compensation. However, a
1657 member may request reimbursement for mileage and dependent
1658 care costs at rates established by the County.]

1659 [(e) *Duties.*

1660 (1) Advise the Executive, Council, Planning Board, and any other
1661 relevant agency on forestry policy issues;

1662 (2) Propose to the Executive, Council, Planning Board, and any
1663 other relevant agency, proactive forestry policies, laws, and
1664 guidelines;

1665 (3) Recommend a comprehensive approach to urban forestry;

- 1666 (4) Advise on a tree inventory;
- 1667 (5) Review and comment on policies and programs related to
- 1668 forestry;
- 1669 (6) Promote and seek funding for a sustained forestry program;
- 1670 (7) Promote and foster a strong sense of community through urban
- 1671 forestry;
- 1672 (8) Communicate with other boards, agencies, and community
- 1673 residents about forestry issues; and
- 1674 (9) Promote volunteerism and act as a general information source.]
- 1675 [(d) *Annual Report*. By October 1 each year, the Committee must submit
- 1676 to the Executive, Council, Planning Board, and any other relevant
- 1677 agency, an annual report on its functions, activities, accomplishments,
- 1678 and plans and objectives.]
- 1679 [(e) *Advocacy*. The Committee must not engage in any advocacy activity
- 1680 at the State or federal levels unless that activity is approved by the
- 1681 Office of Intergovernmental Relations.]
- 1682 [(f) *Staff*. The Chief Administrative Officer must provide appropriate
- 1683 staff to the Committee.]

1684 *Approved:*

1685

Michael Knapp, President, County Council

Date

1686 *Approved:*

1687

Isiah Leggett, County Executive

Date

B14-07



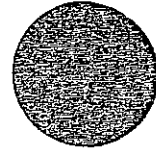
MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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September 28, 2007

In File

030866



The Honorable Marilyn Praisner
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Planning Board's Recommended Amendments to the Forest Conservation Law

Dear President Praisner:

I am pleased to forward for the Council's consideration the Planning Board's recommended amendments to the Forest Conservation Law, Chapter 22A of the County Code. The Planning Board recommended forwarding the amendments to Council on September 20, 2007. The purpose of the amendments was to clarify and moderately strengthen the requirements to applicants.

The proposed changes to the law include:

Level 1, 2 and 3 Reviews. There is considerable confusion with "exemptions" in the existing law. The regulated community and the public incorrectly believe that an "exempt" property is exempt from Chapter 22A of the code, when they were only exempt from submitting a forest conservation plan. The proposed amendment removes "exemptions" and makes applicants subject to either a level 1, 2 or 3 reviews. A level 1 review includes a natural resource inventory/forest stand delineation and forest conservation plan. The level 2 review has a lesser requirement and would entail a tree inventory and a tree protection plan, but no forest conservation plan. Finally, the level 3 review would only require a declaration of intent.

Thresholds. The amendments forwarded today supports a 5 percent increase in the conservation threshold and afforestation thresholds for all land use categories except for the agricultural resource area land use category. The attached document does not support changes to the land use categories.

Maintenance and Management Agreements. The Planning Board amendment recommends an increase in the maintenance and management periods for planted forests from 2 years to 5 years throughout the county. This would make the entire County subject to the same requirements as currently required for plantings within Special Protection Areas.

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Financial Security. Since there is a recommended increase in the maintenance and management period, it is only natural to extend the financial security requirements to the same 5 year-year period. This change is included in the amendment.

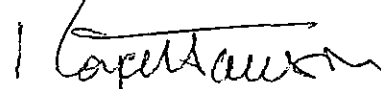
Enforcement and Violations. Throughout the process, planning staff has indicated to the Planning Board, the public, and Council staff, that the enforcement and violations sections in Article III of the Forest Conservation law would be consolidated in the enforcement rules of 50-41 for all M-NCPPC enforcement responsibilities. Staff proposed no changes to this section with the understanding and with the concurrence of Councilmember Elrich that modifications/amendments to the enforcement and violations section could occur in Council in response to the rules adopted under 50-41. The proposed enforcement rules are forthcoming for discussion.

Effective date or grandfathering. The Planning Board's amendment does not include an effective date or a grandfathering provision. This is an issue that needs to be addressed by the Council in their deliberations of the amendments.

Tree Preservation Bill. Prior to planning staff's work on revisions to the forest conservation law, Council and planning staff and the environmental/community groups recognized the need for a tree preservation bill. A tree preservation bill should complement the forest conservation law and cover properties not subject to the forest conservation law or properties subject to level 2 and 3 reviews. The tree protection bill should be administered by the Department of Permitting Services. A tree preservation bill is the appropriate tool to protect smaller parcels of land. For all these reasons, the Planning Board believes that Chapter 22A should not be revised to reduce the minimum lot size below 40,000 square feet. More tree protection and compensation can be achieved by a properly structured tree preservation bill than would be achieved by the forest conservation law.

Thank you for your attention to this matter. I would be delighted to answer any questions you or any other Council member may have about the proposed amendments.

Sincerely,



Royce Hanson
Chairman

RH:MP:ss
Enclosure

AMENDMENT

To Bill 37-07

BY COUNCILMEMBER ELRICH

PURPOSE: This amendment would:

- (1) make certain changes to certain criteria and requirements for certain level of reviews as proposed in Bill 37-07;
- (2) establish a County Forest Conservation Coordinator;
- (3) establish forest conservation requirements for County school projects;
- (4) allow the Planning Director to waive certain requirements only if the County Forest Conservation Coordinator concurs with the Planning Director;
- (5) require a tree expert to be licensed to perform duties assigned to a tree expert by the Forest Conservation Law;
- (6) specify that approval of certain documents may be revoked if the approving authority relied on false or misleading statements in approving the documents;
- (7) lower the threshold level of cutting and clearing required to trigger the Forest Conservation Law;
- (8) amend certain retention, afforestation, and reforestation requirements;
- (9) amend certain ratios of forest removed to forest planted;
- (10) amend certain forest mitigation requirements and procedures;
- (11) amend certain variance requirements;
- (12) modify certain Forest Conservation Fund requirements;
- (13) establish certain grandfathering criteria;
- (14) prohibit the Director of Permitting Services from issuing a building permit if land was cleared in violation of the forest conservation law;
- (15) require certain applicants to notify certain other property owners of certain proposed actions under the forest conservation law, and specify the time period for notice to property owners and the Planning Director;
- (16) allow an aggrieved party to file a private civil action to enforce the forest conservation law;
- (17) make clarifying changes to Bill 37-07; and
- (18) generally amend the Forest Conservation Law.

Beginning on page 2, add after line 2:

8-25. Permits.

(a) *Action on application.* The Director must examine or cause to be examined each application for a building permit or an amendment to a permit within a reasonable time after the application is filed. If the application or the plans do not conform to all requirements of this Chapter, the Director must reject the application in writing and specify the reasons for rejecting it. If the proposed work conforms to all requirements of this Chapter and all other applicable laws and regulations, including Chapter 22A, the Director must issue a permit for the work as soon as practicable.

(c) [[Reserved.]] *Compliance with Forest Conservation Law.* The Director must not issue a permit for any structure that would be located on, in, or under land from which any tree or other woody plant has been cut, cleared, or graded in violation of Chapter 22A for 5 years.

Beginning on page 2, amend lines 14-16 to read:

(b) *Purpose.* The purpose of this Chapter is to:

- (1) save, maintain, and plant trees and forested areas for the benefit of County residents and future generations with the goal of no forest net loss;

Beginning on page 3, amend lines 32-33 to read:

Afforestation threshold means a specific percentage of a tract which is used to determine the afforestation requirements.

Agricultural activity means farming activities conducted as part of a recognized commercial enterprise, including: plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging ~~[[and]]~~ or timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, and the cultivation of orchard, nursery, and other products.

Beginning on page 3, add after line 43 and amend lines 44-59 to read:

Champion class tree means the largest tree of its species and all known trees of the same species within 10% of the point value of the existing Champion tree.

Champion tree means the largest tree of its species in the County, [as designated by the] as identified in the [[County Forest Conservancy District [Board] Board's Champion Tree Register [or its designee]]] register of champion tree's maintained by the County Forest Conservation Coordinator.

* * *

Commercial logging ~~[[or timber harvesting]]~~ *operation* means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

Declaration of intent means a signed and notarized statement by a landowner that the cutting of trees on the landowner's property:

- (1) is for purposes [exempted under this Chapter; and] of complying with Sections 22A-6(b) and (c);
- (2) no additional forest clearing activity ~~[[requiring a Forest Conservation Plan]]~~ will occur on site within 7 years of the date of completion of the proposed activity; and
- (3) will not circumvent the requirements of this Chapter.

* * *

[[*Development project completion* means the date or event identified in the forest conservation plan agreement, but no later than the date on which the first use-and-occupancy permit is issued for the development (or activity) subject to the preliminary plan of subdivision or sediment control permit or, if a use-and-occupancy permit is not required, the date on which the final building inspection or sediment control inspection (for activities not involving building) is conducted by the Department of Permitting Services. A staged development may have more than one completion date.]]

* * *

Environmental Buffer means a strip of land generally contiguous with and parallel to any body of water, wetland, wetland buffer, 100-year floodplain, and a perennial or intermittent stream, [[and stream buffer. An environmental buffer may also include a hydraulically connected]] steep slope and erodible soils.

Beginning on page 4, amend lines 65-78 to read:

Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide regardless of political or property boundaries. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand. Forest includes:

- (1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; [and]

(2) forest areas that have been cut but not cleared[.]; and

(3) areas where at least one layer may not be present due to site conditions, pest predation, human impacts, or non-native species.

Forest does not include an orchard.

* * *

Beginning on page 4, add after line 78 to read:

Forest conservation threshold means the percentage of the net tract area at which the reforestation ratio requirement changes [[from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed]].

Beginning on page 5, amend line 83 to read:

Government Entity means any federal, state, or local organization which in addition to having governmental character has sufficient discretion to distinguish it as separate from the administrative structure of any other governmental unit.

High-density residential area means an area zoned for densities greater than [[one]] 10 dwelling [[unit]] units per [[40,000 square feet]] acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

* * *

[[*Institutional development* area means land occupied by uses such as schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, fire stations, golf courses, recreation areas, parks, [and] cemeteries, and religious institutions. [In this Chapter, institutional development does not include a religious institution which is a permitted use in any zone and would not require a special exception.]]]

Beginning on page 5, add after line 83 to read:

99 Low density residential means an area zoned for a density greater than 1
100 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per acre
101 including both existing and planned development and their associated
102 infrastructure such as roads, utilities, and water and sewer.

* * *

Beginning on page 5, amend lines 90-94 to read:

104 Medium-density residential area means an area zoned for a density greater
105 than 1 dwelling unit per [[5 acres]] acre and less than or equal to [[1]] 10
106 dwelling [[unit]] units per [[40,000 square feet]] acre, including both
107 existing and planned development and their associated infrastructure, such
108 as roads, utilities, and water and sewer service.

* * *

Beginning on page 5, amend line 98 to read:

Net tract area means the total area of a tract, including both forested and unforested areas, to the nearest 1/10 acre, reduced by any previously approved Forest Conservation Plan, any forest conservation or scenic easement with a government entity, and any road or utility rights-of-way which are unrelated to and will not be improved as part of the development application. However, in agriculture and resource areas, net tract area is the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities. For a linear project, net tract area is the area of a right-of-way width or the limits of disturbance as shown on the development application, whichever is greater.

Beginning on page 6, amend lines 108-117 to read:

120 *Person* means:

- 121 (1) the federal government, the state, any county, [[municipal
122 corporation]] municipality, or other political subdivision of the state,
123 or any of their units[,];
- 124 (2) an individual, receiver, trustee, guardian, executor, administrator,
125 fiduciary, or representative of any kind[,]; or
- 126 (3) any partnership, firm, common ownership community or other
127 homeowners' association, public or private corporation or any of their
128 affiliates or subsidiaries[, or].
- 129 [(4) any other entity.]

Beginning on page 6, add after line 118 to read:

130 Priority planting area means environmental buffer areas, connections
131 between and additions to forested areas, critical habitat areas,
132 topographically unstable areas, and land use and road buffers.

Beginning on page 6, add after line 124 to read:

- 133 *Sediment control permit* means a permit required to be obtained for certain
134 land disturbing activities:
- 135 (1) under Chapter 19, Article I;
- 136 (2) from the Washington Suburban Sanitary Commission for major
137 utility construction as defined under regulations of the
138 Commission; or
- 139 (3) from a [[municipal corporation]] municipality.

Beginning on page 6, add after line 124 and amend lines 125-126 to read:

140 Specimen tree means a tree as specified in the Forest Conservation
141 Regulations.

142 [[Stream buffer means a strip of land contiguous with and parallel to the
143 bank of a perennial or intermittent stream.]]

Beginning on page 6, add after line 129 to read:

144 *Timber harvesting* means a tree cutting operation affecting [[one or more
145 acres]] 10,000 square feet or more of forest or developed woodland within a
146 one year period [[that disturbs]] or disturbing 5,000 square feet or more of
147 forest floor. Timber harvesting does not include grubbing and clearing of
148 root mass.

149 * * *

150
151 [[Tree Expert]] Licensed tree expert means person who meets all applicable
152 requirements under of Title 5, Subtitle 4 of the Natural Resources Article of
153 the Maryland Code.

Beginning on page 7, add after line 146 to read:

154 Wetland means an area that is inundated or saturated by surface water or
155 groundwater at a frequency and duration sufficient to support, and that under
156 normal circumstances does support a prevalence of soils exhibiting
157 characteristics of prolonged inundation and vegetation typically adapted for
158 life in saturated soil conditions, commonly known as a hydrophytic
159 vegetation.

Beginning on page 8, amend lines 181-276 to read:

160 (b) Level 1 Review. A person must submit to a Level 1 Review if:

- 161 (1) the person is required by law to obtain approval for a
162 development plan, diagrammatic plan, project plan, preliminary
163 plan of subdivision approval, or site plan;
164 (2) the person is required by law to obtain a sediment control
165 permit or approval of a special exception on a tract of land

- 166 [[40,000]] 10,000 square feet or larger, and is not otherwise
 167 required to obtain an approval under subsection (b)(1);
- 168 (3) the person proposes to perform any cutting or clearing, or any
 169 other land disturbing activity that would threaten the viability of
 170 any champion class tree, wherever located;
- 171 (4) the person is subject to mandatory referral or a park facility
 172 plan on a tract of land [[40,000]] 10,000 square feet or larger
 173 [[which is not excluded under subsection (c) or (d)]];
- 174 [[5) the person proposes highway construction not excluded under
 175 subsections (c) or (d); and]]
- 176 [[6)] (5) a public or private utility proposes a cumulative limit of
 177 disturbance of [[40,000]] 5,000 square feet or more for all
 178 stages of work in a public right-of-way or utility easement[.];
- 179 (6) a person removes any forest in an environmental buffer or any
 180 forest located on a property in a special protection area; and
- 181 (7) a person who proposes an activity that results in the cutting,
 182 clearing, or grading of any trees or forest that are subject to an
 183 approved Forest Conservation Plan or any forest conservation
 184 or scenic easement with a government entity.
- 185 (c) Level 2 Review. A person must submit to Level 2 Review if the
 186 person proposes:
- 187 (1) construction on an existing single lot of [[40,000]] 10,000
 188 square feet or greater in size a dwelling house, an addition to a
 189 house, or an accessory structure (such as a pool, tennis court, or
 190 shed), if the activity does not result in the cutting clearing, or
 191 grading of;

(A) more than a total of ~~[[40,000]] 5,000 square feet of~~
forest;

~~[[B) any forest in an environmental buffer;]]~~

~~[[C) any forest on property located in a special protection area~~
~~which must submit a water quality plan;]]~~

~~[[D)] (B) a person who will be disturbing any specimen or~~
~~champion tree wherever located; or~~

~~[[E)] (C) any trees or forest that are subject to a previously~~
~~approved forest conservation plan or tree save plan.~~

(2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a
lot line adjustment, conversion of an existing recorded outlot, or
joining two or more existing residential lots into one lot, if:

(A) rhe only development located on the resulting lot is a
single family dwelling unit or an accessory structure
(such as a pool, tennis court, or shed); and

(B) development does not result in the cutting, clearing, or
grading of:

(i) more than a total of ~~[[40,000]] 5,000 square feet of~~
forest;

~~[[ii) any forest in an environmental buffer;]]~~

~~[[iii) any forest on property located in a special~~
~~protection area which must submit a water quality~~
~~plan;]]~~

~~[[iv)] (ii) any specimen or champion tree; or~~

216 ~~[[v)]~~ (iii) any tree or forest that is subject to the
 217 requirements of a previously approved forest
 218 conservation plan or tree save plan;

219 (3) a modification to existing non-residential developed property if
 220 less than 5,000 square feet of forest will be cleared; [[and]]

221 (4) a State or County highway construction activity that is subject
 222 to Section 5-103 of the Natural Resources Article of the
 223 Maryland Code, or Level 1 Review[.]; and

224 (5) a person who proposes an activity that results in the cutting,
 225 clearing, or grading of any trees or forest that are subject to an
 226 approved Forest Conservation Plan or any forest conservation
 227 or scenic easement with a government entity.

228 (d) Level 3 Review. A person must submit to Level 3 Review if the
 229 person:

230 (1) proposes an agricultural activity that is exempt from:

231 (A) platting requirements under Section 50-9; and

232 (B) requirements to obtain a sediment control permit under
 233 Section 19-2(c)(2).

234 Agricultural support buildings and related activities are
 235 excluded only if they are built using best management practices,
 236 as defined by the Natural Resources Conservation Service;

237 (2) proposes a tree nursery;

238 (3) applies for a special exception for an existing structure and the
 239 proposed use will not result in clearing of existing forest or
 240 trees;

(4) proposes a commercial logging [[and]] or timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that has received:

(A) approval from the County [[Arborist or the Arborist's]] Forest Conservation Coordinator or the Coordinator's designee that the logging or timber harvesting plan is not inconsistent with County forest management objectives and is otherwise appropriate; and

(B) a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19. A person who qualifies under this subsection must provide a copy of all sediment control permits issued for commercial logging [[and]] or timber harvesting operations to the Montgomery County Planning Department.

(5) proposes a governmental project reviewed for forest conservation purposes by the State Department of Natural Resources under the Code of Maryland Regulations;

(6) conducts routine maintenance of public utility easements and rights-of-way, and routine maintenance of stormwater management facilities that are not subject to an existing conservation easement, except for the clearing of access roads;

(7) conducts utility or other work that is of an emergency nature;

- (8) conducts noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code; [[and]]
- (9) cuts or clears public utility rights-of-way or land for electric generating stations licensed under Section 54A and 54B or Section 54I of Article 78 of the Maryland Code, if certificates of public convenience and necessity have been issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code[[.]]
- (10) proposes an activity that results in the cutting, clearing or grading of any trees or forest that are subject to an approved Forest Conservation Plan or any forest conservation or scenic easement with a government entity.

Beginning on page 23, add after line 564 to read:

- (b) If the forest to be cut or cleared for a County highway project equals or exceeds ~~[[40,000]]~~ 10,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of reforestation for each acre of forest cleared.

Beginning on page 23, add after line 564 to read:

22A-9A. County School Projects.

(a) General.

- (1) This Section applies to construction of a school by the County as part of an approved capital Improvements Program project.
- (2) The construction should minimize forest cutting or clearing and loss of specimen or champion trees to the extent possible while balancing other design, construction, and environmental standards. The constructing agency must make a reasonable

290 effort to minimize the cutting or clearing of trees and other
 291 woody plants.

292 (b) If the forest to be cut or cleared for a County school project equals or
 293 exceeds 10,000 square feet, the constructing agency must reforest a
 294 suitable area at the rate of one acre of reforestation for each acre of
 295 forest cleared.

296 (c) Reforestation for County school projects must meet the standards in
 297 subsections 22A- 8(a), (c), and (g).

298 (d) Any mitigation requirement for loss of specimen or champion trees
 299 must be based on the size and character of the tree.

Beginning on page 24, amend lines 601-602 to read:

300 [(3)] (B) The Planning Director may waive any requirement for
 301 information that is unnecessary for a specific site if the
 302 County Forest Conservation Coordinator concurs.

Beginning on page 25, amend lines 630-636 to read:

303 [(2)] (B) A [forest conservation plan] Forest Conservation Plan
 304 [may] must include protective measures designed to
 305 conserve [significant and mature trees on adjacent
 306 property] trees on the subject tract, [[or]] and on adjacent
 307 properties, from adverse impacts that may be caused by
 308 the development or land disturbing activities proposed
 309 for the tract.

Beginning on page 26, amend lines 647-676 to read:

310 (b) Level 2 approval required. A person who is subject to Level 2 must
 311 submit to the Montgomery County Planning Department a Tree
 312 Inventory, Tree Protection Plan, and a Declaration of Intent.

313 (1) Tree Inventory.

314 (A) A Tree Inventory must be signed by a certified arborist,
 315 qualified professional, or a licensed tree expert, and
 316 must:

317 (i) assess, identify, and characterize the tree species;

318 (ii) estimate the height, age, and canopy of each tree;

319 (iii) document the diameter of all trees on a tract; and

320 (iv) provide other information or requirements
 321 specified by regulation or in the technical manual.

322 (B) The Planning Director may waive any requirement for
 323 information that is unnecessary for a specific site if the
 324 County Forest Conservation Coordinator concurs.

325 (C) An approved Tree Inventory is not valid after 2 years
 326 unless a certified arborist, qualified professional, or a
 327 licensed tree expert recertifies the Tree Inventory or a
 328 Tree Protection Plan is approved.

329 (2) Tree Protection Plan

330 (A) A Tree Protection Plan must be signed by a certified
 331 arborist or qualified professional and used to protect trees
 332 during construction. A Tree Protection Plan must
 333 identify:

334 (i) trees to be retained and removed;

- (ii) the proposed limit of disturbance; existing and proposed utility connections;
- (iii) detailed drawings and measures to protect trees; and
- (iv) any other information or requirements specified by regulation or in the trees technical manual.

Beginning on page 27, amend lines 684-690 to read:

- (C) The Planning Board may require a person who fails to file or does not comply with a Declaration of Intent to:
 - (i) submit [[for]] to a Level 1 review; [[and]] or
 - (ii) pay a penalty fee per square foot of forest cut or cleared [[established by fee schedules approved by Council resolution per square foot of forest cut or cleared, but in no case less than the minimum set by state law]].

Beginning on page 28, amend lines 708-719 to read:

- (a) [General] Level 1 Review.
 - (1) Natural Resource Inventory/Forest Stand Delineation. A person subject to a Level 1 review must submit to the Planning Director a Natural Resource Inventory/Forest Stand Delineation. Within 30 days after receiving the Natural Resource Inventory/Forest Stand Delineation, the Planning Director must notify the person whether the Natural Resource Inventory/Forest Stand Delineation is complete and approved. An incomplete or inaccurate application must be denied. If the Planning Director fails to act on the submission within 30 days,

the delineation will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances. Approval may be revoked at any time during the development review process if false or misleading information was relied on the Natural Resource Inventory/Forest Stand Delineation approval.

Beginning on page 36, amend lines 923-939 to read:

(b) Level 2 Review.

(1) Tree Inventory. A person subject to a Level 2 review must submit to the Planning Director the Tree Inventory with a Declaration of Intent. Within 30 days after receiving the Tree Inventory and Declaration of Intent, the Planning Director must notify the person whether the Tree Inventory is complete and approved. An incomplete or inaccurate application must be denied. If the Planning Director fails to act on the submission within 30 days, the Tree Inventory will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances. Approval may be revoked at any time during the development review process if false or misleading information was relied upon for the Tree Inventory approval.

(2) Tree Protection Plan. After a person is notified that the Tree Inventory is approved, a person must submit a Tree Protection Plan to the Planning Board or Planning Director. The Tree Protection Plan must be considered in conjunction with any application to which it is a necessary component. Within 45

384 days after the Planning Director receives the Three Protection
 385 Plan, the Planning Director must notify the applicant whether
 386 the Tree Protection Plan is complete and approved. An
 387 incomplete or inaccurate Tree Protection Plan must be denied.
 388 If the applicant is not notified within 45 days, the Plan will be
 389 treated as approved. The Planning Director may extend the
 390 deadline for an additional 15 days for extenuating
 391 circumstances.

- 392 (c) Level 3 Review. A person subject to a Level 3 review must submit to
 393 the Planning Director a Declaration of Intent. Within 30 days after
 394 receiving the Declaration of Intent, the Planning Director must notify
 395 the person whether the Declaration of Intent is complete and
 396 approved. An incomplete or inaccurate application must be denied. If
 397 the Planning Director fails to act on the submission within 30 days,
 398 the Declaration of Intent will be treated as approved. The Planning
 399 Director may extend the deadline for an additional 15 days for
 400 extenuating circumstances.

Beginning on page 37, amend lines 942-965 to read:

- 401 (a) [Table.] General. The Forest Conservation Plan must[[, to the
 402 maximum extent feasible,]] retain certain vegetation and specific
 403 areas in an undisturbed condition, unless the Planning Board or the
 404 Planning Director finds retention is not feasible without undesirable
 405 alterations to the proposal. The Forest Conservation Plan must
 406 mitigate for the loss of forest and trees in the following order of
 407 preference:
 408 (1) on site reforestation or afforestation;

(2) offsite forest planting within the same watershed;

(3) on site non-native and invasive species management control
with supplemental planting;

(4) on site landscaping with an approved plan;

[[(4)] (5) forest mitigation banks; and

[[(5)] (6) in-lieu fee [; and]];

[[(6) on site landscaping with an approved plan.]]

(b) How to Calculate the Requirements.

(1) Table.

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area for Level 1 Reviews</i>		
<i>Land Use [Category] Type¹</i>	<i>[Forest] Conservation Threshold</i>	<i>[Required] Afforestation Threshold</i>
Agricultural and Resource Areas	50%	20%
<u>Low Density Residential Areas</u>	<u>40%</u>	<u>20%</u>
Medium Density Residential Areas	[25%] <u>30%</u>	[20%] <u>[[25%]] 20%</u>
[[Institutional Development Areas	[20%] <u>25%</u>	[15%] <u>20%]]</u>
High Density Residential Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
Mixed-use Development Areas	[15-20% ² <u>20-25%¹</u>	[15%] <u>20%</u>
Planned unit Development Areas	[15-20% ² <u>20-25%¹</u>	[15%] <u>20%</u>
Commercial and Industrial Areas	[15] <u>20%</u>	[15%] <u>20%</u>

<u>Highway Right-of-Ways and School Sites²</u>	<u>N/A</u>	<u>N/A</u>
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- 418
- 419 ¹ The residential and institutional portions of the tract must meet the [20%] 25%
- 420 requirement. All other uses must meet the 20% requirements. [If a planned unit
- 421 development was initially approved before January 1, 1992, and is between
- 422 25% and 75% complete on July 1, 1992, (as measured by the total acreage
- 423 subject to the planned unit development that has received site plan approval),
- 424 the forest conservation threshold is calculated at 15 per cent. If the planned unit
- 425 development is less than 25% complete, the forest conservation threshold is
- 426 calculated using the adjustment shown in the chart.]
- 427 ² Highway right-of-way and school site mitigation requirements are specified in
- 428 22A-9 and 22A-9A.

Beginning on page 39, amend lines 987-998 to read:

429 [(c)] (2) Reforestation. The forest conservation plan must provide for

430 reforestation as follows:

431 [(1)] (A) For all existing forest cover measured to the nearest

432 1/10 acre cleared on the net tract area below the

433 applicable forest conservation threshold, the area of

434 forest removed must be reforested at a ratio of 2 acres

435 planted for every one acre removed.

436 [(2)] (B) For all existing forest cover measured to the nearest

437 1/10 acre cleared on the net tract area above the

438 applicable forest conservation threshold, the area of

439 forest removed must be reforested at a ratio of [(1/4)] 1/2

440 acre planted for every one acre removed.

Beginning on page 40, amend lines 1011-1027 to read:

441 [(d)] (3) *Afforestation.*

442 [(1)] (A) A site with less than 20 percent of the net tract area in
443 forest cover must be afforested in accordance with the
444 required afforestation percentages shown on the table in
445 subsection [(a)] (b)(1) of this Section.

446 [(2)] (B) Afforestation [should] must be accomplished by the
447 planting, maintenance, and establishment of forest
448 cover[. However, if the applicant] unless a person
449 demonstrates to the satisfaction of the Planning Board or
450 Planning Director, as the case may be[, that afforestation
451 using forest cover is inappropriate]. Afforestation
452 requirements may be satisfied by tree cover for a site
453 because of its location in an urban setting, redevelopment
454 context, high-density residential, commercial, industrial,
455 planned unit development, or institutional area (as
456 defined in Section 22A-3), or similar reason[[,
457 afforestation requirements may be satisfied by tree
458 cover]].

Beginning on page 42, amend lines 1063-1073 to read:

459 (2) *Off-site afforestation and reforestation.* In addition to the use
460 of other sites proposed by an applicant and approved by the
461 County, off-site afforestation or reforestation may also include:
462 (A) Forest mitigation banks designated in advance by the
463 County.

464 (B) Protection of existing off-site forest. Acquisition of an
 465 off-site protective easement for existing forested areas
 466 not currently protected is an acceptable mitigation
 467 technique instead of off-site afforestation or reforestation
 468 planting, but the forest cover protected must be ~~[[2]]~~ 4
 469 times the afforestation and reforestation requirements.

Beginning on page 45, add after line 1155 and amend line 1156 to read:

470 ~~(f)~~ Non-native and invasive species management control with
 471 supplemental planting. Ratio of 1 acre planting requirement can be
 472 satisfied by 2 acres of non-native and invasive species management
 473 control with supplemental planting.

474 ~~[(g)]~~ ~~[[f)]~~ (g) *In lieu fee.*

Beginning on page 46, amend lines 1180-1189 to read:

475 ~~[(h)]~~ ~~[[g)]~~ (h) Agreements and Long-Term Protection.

476 (1) Maintenance agreement. A forest conservation plan must
 477 include a ~~[two]~~ 5-year binding agreement for maintenance of
 478 conservation areas, including the watering ~~[[as practical)]]~~,
 479 feeding, ~~[and]~~ replanting of areas to be afforested or reforested,
 480 and non-native and invasive management. The ~~[2-year]~~ 5-year
 481 period starts upon satisfactory final inspection of the
 482 conservation measures required under the ~~[forest conservation~~
 483 ~~plan]~~ Forest Conservation Plan. A staged project may have
 484 more than one agreement.

Beginning on page 47, amend line 1191 to read:

485 ~~[(i)]~~ ~~[[h)]~~ (i) Financial Security.

Beginning on page 48, amend lines 1226-1232 to read:

- 486 (6) Events of forfeiture. The financial security instrument may be
487 subject to forfeiture on:
- 488 (A) failure of the obligee to perform the work under the
489 [forest conservation plan] Forest Conservation or Tree
490 Protection Plan in accordance with the required schedule;
491 or
492 (B) failure of the obligee to pay a required in lieu fee in a
493 timely manner.

Beginning on page 49, amend lines 1238-1274 to read:

- 494 (b) A person can create a forest mitigation bank by permanently
495 protecting:
- 496 (1) existing forest;
- 497 (2) planting and protecting new forests on open land in
498 [[unplanted]] environmental buffers or in areas contiguous to
499 existing and protected forests; or
- 500 (3) a combination of the two.
- 501 [(b)] (c) The area of land where the bank is [[planted]] existing forest must
502 be at least 1 acre.
- 503 (d) The area of land where planting in an unplanted environmental buffer
504 or in areas contiguous to existing and protected forests must be at
505 least 10,000 square feet.
- 506 [(c)] [(d)] (e) A forest mitigation bank must use native plants for
507 afforestation and reforestation[, unless inappropriate].

508 ~~[(d)]~~ ~~[(e)]~~ (f) A person proposing to create a forest mitigation bank must
 509 submit a plan to the Planning Director, [which must include] that
 510 includes:

- 511 (1) a [2-year] 5-year maintenance agreement which meets the
 512 standards in subsection [22A-12(h)(1)] 22A-12(g)(1);
- 513 (2) all information required by subsection [22A-10(c)]
 514 22A-10(b)(2) for a [forest conservation plan] Forest
 515 Conservation Plan; and
- 516 (3) the draft easement, covenants, or deed restrictions for the area
 517 to be sold to the developer when credits are withdrawn from the
 518 bank.

519 (g) Within 45 days after the Planning Director receives a proposed Forest
 520 Mitigation Bank Plan, the Planning Director must notify the applicant
 521 whether the Forest mitigation Bank Plan is complete and approved.
 522 An incomplete or inaccurate Forest Mitigation Bank Plan must be
 523 denied. If the applicant is not notified within 45 days, the Plan will be
 524 treated as approved. The Planning Director may extend the deadline
 525 for an additional 15 days for extenuating circumstances.

526 ~~[(e)]~~ ~~[(f)]~~ (h) Forest mitigation banks must be established in accordance
 527 with the priority areas described in subsection [22A-12(e)(3)] 22A-
 528 12(b)(2), or in areas identified in a master plan or functional plan.

529 (i) A forest mitigation bank must only be established on land in private
 530 ownership.

531 ~~[(f)]~~ ~~[(g)]~~ (j) Credits must not be debited from a forest mitigation bank
 532 until all trees have been planted and accepted by the Planning
 533 Director, and either financial security which meets the standards in

subsection [22A-12(i)] 22A-12(h) has been provided or the Planning Director has found that a sufficient number of trees have successfully survived for [2] 5 years after planting.

[(g)] ~~[[h)]~~ (k) To debit credits from an approved forest mitigation bank, the easement, covenants, or deed restrictions which assure that the newly reforested or afforested area of land remains a forest in perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show that credits are available and the applicant has the right to debit them. The credits must buy an amount of land equal to the applicant's off-site reforestation or afforestation requirements under its approved forest conservation plan.

Beginning on page 52, add after line 1338 to read:

(f) Any person subject to Level 1, Level 2, or Level 3 approval under this Chapter must notify the Planning Director and the property owner and resident of any adjoining or confronting property in writing at least 10 days before performing any cutting, clearing, or grading. Failing to notify the Planning Director, any property owner, or resident entitled to this notice as required by this Section is a violation of this Chapter.

Beginning on page 53, add after line 1350 to read:

- (a) *Class A violation.* Violation of this Chapter or any regulations adopted under it is a Class A civil or criminal violation. Notwithstanding Section 1-19, the maximum civil fine is \$1,000. Each day a violation continues is a separate violation under this Chapter.
- (b) *Enforcement authority.* The Maryland-National Capital Park and Planning Commission has primary enforcement authority under this Chapter. ~~[[Administrative]]~~ The Planning Director may initiate

administrative enforcement actions ~~[[are to be initiated by the~~
Planning Director in accordance with]] under this Article.

(c) *Civil and criminal actions.* The Commission may bring any civil or criminal action that the County may bring under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it. The Commission may also bring a civil action to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order. These remedies are in addition to:

- (1) any remedy that the Commission or County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan; and
- (2) any private civil remedy available under subsection (d).

(d) Private civil action.

- (1) An aggrieved person may file civil action in any court with jurisdiction to enforce this Chapter or any forest conservation plan, administrative order, or other regulatory approval under it. An aggrieved person includes any Montgomery County resident or organization.
- (2) In an action filed under this subsection, the Court may temporarily or permanently enjoin any violation or imminent violation of County law, order any person to correct any violation of County law, award damages to any person entitled to them by law, remand the matter to the Planning Board of any necessary action under this Chapter, or order any other appropriate remedy.

(3) In an action filed under this subsection, an aggrieved person may challenge the factual basis of any order or decision by the Planning Director or the Planning Board if the person shows that the order or decision was:

(A) based on materially false, misleading, inaccurate, or incomplete information; or

(B) taken without proper notice to any person who was entitled to notice under this Chapter.

[[(d)]] (e) *Administrative civil penalty.*

* * *

[[(e)]] (f) *Fund.* Money collected under this Section must be deposited into the [[forest conservation fund]] Forest Conservation Fund.

Beginning on page 56, amend lines 1432-1439 to read:

(a) Natural Resource Inventory/Forest Stand Delineations, Tree Inventories, and Forest Conservation or Tree Protection Plans approved by the Planning Director.

(1) Appeal to Planning Board. An applicant has 30 days from the date of the Planning Director's written decision on a Natural Resource Inventory/Forest Stand Delineation, Tree Inventory, or Forest Conservation or Tree Protection Plan to appeal to the Planning Board.

Beginning on page 57, add after line 1462 and amend lines 1463-1494 to read:

(c) Application requirements for public notice. An applicant for a variance must post their request for 20 days on the Department of Permitting Services style permit board according to the Department's regulations.

607 ~~[(c)]~~ (d) *Referral to other agencies.* Before considering a variance, the
 608 Planning Board must refer a copy of each request to the County
 609 ~~[[Arborist]]~~ Forest Conservation Coordinator, Planning [Department]
 610 Director, and other appropriate officials or agencies for a written
 611 recommendation before acting on the request. Recommendations must
 612 be submitted to the Planning Board within 30 days from the receipt
 613 [by the official or agency] of the [request] referral or the
 614 recommendation [should] must be presumed to be favorable.

615 (e) Public Comment. Before considering a variance, the Planning Board
 616 must accept written comment from the public submitted within 30
 617 days of the posting of the variance request, as required by subsection
 618 (c).

619 ~~[(d)]~~ (f) *Minimum criteria.* A variance may only be granted if it meets the
 620 provisions of subsection (a) and (b) above. A variance must not be
 621 granted if granting the request:

- 622 (1) [will] Will confer on the applicant a special privilege that would
 623 be denied to other applicants;
- 624 (2) [is] Is based on conditions or circumstances which are the result
 625 of the actions by the applicant;
- 626 (3) [arises] Arises from a condition relating to land or building use,
 627 either permitted or nonconforming, on a neighboring property;
 628 or
- 629 (4) [will] Will violate State water quality standards or cause
 630 measurable degradation in water quality.

631 ~~[(e)]~~ (g) *Approval procedures; Conditions.* The Planning Board[, or the
 632 District Council on a development plan,] must [make findings] find

that the applicant has met all requirements of this Section before granting a variance. Appropriate conditions may be imposed to promote the objectives of this Chapter and protect the public interest.

[(f)] (h) *Notice to State Department of Natural Resources; Right to initiate or intervene in proceedings.*

(1) Notice of a pending variance request must be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.

(2) The Department of Natural Resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance.

Beginning on page 61, amend lines 1565-1586 to read:

There is a County forest conservation fund. Money deposited into the [fund] Fund must be used in accordance with the adopted County budget and in accordance with the following:

- (a) *In lieu fees.* Money deposited in the [forest conservation fund] Forest Conservation Fund [instead of planting] must be spent on the reforestation and afforestation for which the money is deposited within 2 years, including costs directly related to site identification, acquisition, design, and preparation, and must not revert to the [general fund] General Fund. The permanent preservation of priority forests, including identification and acquisition of a site; may be substituted for reforestation and afforestation at a rate of [[2]] 4 acres of forest preservation for each acre of planting required. Funds remaining after all reforestation and afforestation requirements are satisfied [[may]] must be spent on any other tree conservation activity,

including purchase of credits from forest mitigation banks or street tree planting.

- (b) *Penalties.* Money collected for noncompliance with a [forest conservation plan] Forest Conservation Plan, Tree Protection Plan, or the associated [2-year] 5-year maintenance agreement must be deposited in a separate account in the [forest conservation fund] Forest Conservation Fund and must not revert to the [general fund] General Fund. Money deposited in this [fund] Fund may be used to administer this Chapter or any purpose set forth in the fund.

Beginning on page 62, amend line 1588 to read:

[22A-30. County Arborist.] [[Reserved.]]

Beginning on page 63, add after line 1614 to read:

Article 5. County Forest Conservation Coordinator.

22A-30. County Forest Conservation Coordinator.

- (a) *Appointment.* The Director of Environmental Protection must designate an employee of the Department to serve as County Forest Conservation Coordinator.
- (b) *Qualifications.* The County Forest Conservation Coordinator must have relevant experience and an advanced degree in horticulture, forestry, forest ecology, plant pathology, landscape architecture, or another related field, or an equivalent combination of education and experience. The County Forest Conservation Coordinator must be licensed as a tree expert under State law.
- (c) *Duties.* The County Forest Conservation Coordinator has the following functions related to resource management and protection of forest and trees in the County:

- 682 (1) Develop a comprehensive County conservation and
683 management strategy, including programs designed to promote
684 afforestation and reforestation in the County and the survival of
685 historic trees and any endangered tree species;
686 (2) Advise the Executive and Council on the effectiveness of
687 County programs to control tree pests and diseases;
688 (3) Review and approve proposed commercial logging or timber
689 harvesting operations under Article 2;
690 (4) Review variance requests and reports under Article 2;
691 (5) Identity and prioritize offsite forest planting and forest retention
692 areas for County projects under this Chapter;
693 (6) Provide liaison with citizens and businesses on forest and tree
694 conservation issues and develop appropriate mechanisms for
695 public input on conservation strategies; and
696 (7) Any other duty required by law or assigned by the Executive.

Beginning on page 65, add after line 1683 to read:

697 Sec. 2. Effective Date. This Act takes effect on July 1, 2008. Any
698 Development Plan filed on or before June 30, 2008 is not subject to any
699 amendment to Chapter 22A made by Section 1.

Resolution No.: _____
Introduced: December 11, 2007
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Elrich

SUBJECT: Resolution to set certain penalties and fees under the County forest conservation law

Background

1. The County forest conservation law, in County Code §22A-16(d)(1), authorizes the County Council to set by law or resolution the maximum amount of the administrative civil penalty authorized by §22A-16(d).
2. The County forest conservation law, in §22A-12(g)(1), authorizes the County Council to set by law or resolution the amount of the fee that the Planning Board may charge in lieu of afforestation or reforestation under §22A-12(g).
3. On December 13, 2005, the Council adopted Resolution No. 15-1271 to set the maximum penalty and fee in amounts to deter violations of the forest conservation law, particularly willful violations.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

1. The maximum amount of the administrative civil penalty authorized by County Code §22A-16(d) is \$9/square foot for any violation of Chapter 22A or any regulation implementing that Chapter.
2. The minimum amount of the fee that the Planning Board may charge in lieu of afforestation or reforestation authorized by County Code §22A-12(g) is \$2/square foot of the area of required planting.
3. Without further action by the County Council, the Planning Board must adjust each dollar amount in this resolution, effective July 1 of each odd-numbered year, by the percentage amount of the annual average increase or decrease (if any) in the Consumer Price Index for all urban consumers in the Washington-Baltimore metropolitan area, or any successor index, for the two most recent calendar years. The Board must calculate this adjustment to the nearest multiple of 5 cents. The

Board must notify the public of the amount of this adjustment not later than May 1 of each odd numbered year.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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Editor's note. — See notes to § 5-15A-01.

(Abrogation of subtitle effective June 30, 2006.)

Subtitle 15A. Maryland GreenPrint Program.

§§ 5-15A-01 to 5-15A-05. Maryland GreenPrint Program.

Abrogated.

Editor's note. — Section 4, ch. 570, Acts 2001, provides that "this Act shall take effect July 1, 2001. It shall remain effective for a period of 5 years and, at the end of June 30, 2006, with no further action required by the

General Assembly, this Act shall be abrogated and of no further force and effect." This subtitle is set out above as it will appear after June 30, 2006, unless further action is taken by the General Assembly.

Subtitle 16. Forest Conservation.

§ 5-1601. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

(b) *Afforestation.* — "Afforestation" means the establishment of a tree cover on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

(c) *Agricultural activity.* — "Agricultural activity" means farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, orchards, nursery, and other products cultivated as part of a recognized commercial enterprise.

(d) *Agricultural and resource areas.* — "Agricultural and resource areas" are undeveloped areas zoned for densities of less than or equal to 1 dwelling unit per 5 acres.

(e) *Champion Tree.* — "Champion Tree" means the largest tree of its species within the United States, the State, county, or municipality, as appropriate.

(f) *Commercial and industrial uses.* — "Commercial and industrial uses" includes manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding, and parking areas.

(g) *Commercial logging or timber harvesting operations.* — "Commercial logging or timber harvesting operations" means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

(h) *Critical habitat area.* — "Critical habitat area" means a critical habitat for endangered species and its surrounding protection area. A critical habitat area shall:

- (1) Be likely to contribute to the long-term survival of the species;
- (2) Be likely to be occupied by the species for the foreseeable future; and
- (3) Constitute habitat of the species which is deemed critical under § 4-2A-06 or § 10-2A-06 of this article.

(i) *Critical habitat for endangered species.* — “Critical habitat for endangered species” means a habitat occupied by an endangered species as determined or listed under § 4-2A-04 or § 10-2A-04 of this article.

(j) *Department.* — “Department” means the Department of Natural Resources.

(k) *Forest.* — (1) “Forest” means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.

(2) “Forest” includes:

(i) Areas that have at least 100 trees per acre with at least 50% of those trees having a 2 inch or greater diameter at 4.5 feet above the ground and larger; and

(ii) Forest areas that have been cut but not cleared.

(3) “Forest” does not include orchards.

(l) *Forest conservation.* — “Forest conservation” means the retention of existing forest or the creation of new forest at the levels prescribed by the State or local authority.

(m) *Forest conservation plan.* — “Forest conservation plan” means a plan approved pursuant to §§ 5-1605 and 5-1606 of this subtitle.

(n) *Forest cover.* — “Forest cover” means the area of a site meeting the definition of forest.

(o) *Forest mitigation banking.* — “Forest mitigation banking” means the intentional restoration or creation of forests undertaken expressly for the purpose of providing credits for afforestation or reforestation requirements with enhanced environmental benefits from future activities.

(p) *Forest stand delineation.* — “Forest stand delineation” means the methodology for evaluating the existing vegetation on a site proposed for development, taking into account the environmental elements that shape or influence the structure or makeup of a plant community.

(q) *Forested slopes.* — “Forested slopes” means an area meeting the definition of forest and growing on an area with a slope of 25 percent or more and covering an area of at least 10,000 square feet.

(r) *High density residential areas.* — “High density residential areas” means areas zoned for densities greater than 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

(s) *Institutional development area.* — “Institutional development area” includes schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries.

(t) *Intermittent stream.* — “Intermittent stream” means a stream in which surface water is absent during a portion of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

(u) *Linear project.* — “Linear project” means a project whose configuration is elongated with nearly parallel sides and used to transport a utility product or public service not otherwise contained in an application for subdivision, such as electricity, gas, water, sewer, communications, trains, and vehicles. Linear

projects may traverse fee simple properties through defined boundaries or through easement rights.

(v) *Local forest conservation program*. — “Local forest conservation program” means a program developed and implemented pursuant to § 5-1603 of this subtitle.

(w) *Medium density residential areas*. — “Medium density residential areas” means areas zoned for densities greater than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

(x) *Mixed use development*. — “Mixed use development” means a single, relatively high density development project, usually commercial in nature, which includes 2 or more types of uses.

(y) *Natural regeneration*. — “Natural regeneration” means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

(z) *Net tract area*. — “Net tract area” means:

(1) Except in agriculture and resource areas or linear project areas, the total area of a site, including both forested and nonforested areas, to the nearest one-tenth acre reduced by that area where forest clearing is restricted by another local ordinance or program;

(2) In agriculture and resource areas, the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities reduced by that area where forest clearing is restricted by another local ordinance or program; and

(3) For a linear project:

(i) The area of a right-of-way width, new access roads and storage; or

(ii) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

(aa) *Nontidal wetland*. — (1) “Nontidal wetland” means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(2) The determination of whether an area is considered a nontidal wetland shall be made in accordance with the publication known as the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands”, published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency.

(3) “Nontidal wetlands” do not include tidal wetlands regulated under Title 16 of the Environment Article.

(bb) *One hundred year floodplain*. — (1) “One hundred year floodplain” means an area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event.

(2) A 100-year flood is a flood which has a 1% chance of being equaled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.

(cc) *Perennial stream*. — "Perennial stream" means a stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey, as confirmed by field verification.

(dd) *Person*. — "Person" includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

(ee) *Planned unit development*. — "Planned unit development" means a development comprised of a combination of land uses or varying intensities of the same land use in accordance with an integrated plan that provides flexibility in land use design approved by the local jurisdiction with at least 20% of the land permanently dedicated to open space.

(ff) *Reforestation; reforested*. — (1) "Reforestation" or "reforested" means the creation of a biological community dominated by trees and other woody plants containing at least 100 trees per acre with at least 50% of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground, within 7 years.

(2) "Reforestation" includes landscaping of areas under an approved landscaping plan that establishes a forest that is at least 35 feet wide and covering 2,500 square feet of area.

(3) "Reforestation" for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

(gg) *Retention*. — "Retention" means the deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards.

(hh) *Seedlings*. — "Seedlings" mean an unbranched woody plant, less than 24 inches in height and having a diameter of less than ½ inch caliper measured at 2 inches above the root collar.

(ii) *Selective clearing*. — "Selective clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

(jj) *Stream buffer*. — "Stream buffer" means all lands lying within 50 feet, measured from the top of each normal bank of any perennial or intermittent stream.

(kk) *Subdivision*. — "Subdivision" means any division of a parcel of land into 2 or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

(ll) *Tract*. — (1) Except as provided in paragraph (2) of this subsection, "tract" means property subject to an application for a grading or sediment control permit or subdivision approval.

(2) If property is included in a planned unit development, "tract" means the entire property subject to the planned unit development.

(mm) *Tree*. — "Tree" means a large, woody plant having 1 or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

(nn) *Whip*. — "Whip" means an unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch caliper measured at 2 inches above the root collar. (1991, ch. 255, § 1; 1992, ch. 22, § 1; 1995, ch. 3, § 1; 1997, ch. 559, §§ 1, 2; 2000, ch. 61, § 7; 2004, ch. 25, § 6.)

Editor's note. — Section 6, ch. 25, Acts 2004, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a new volume or a replacement volume of the Annotated Code, shall make nonsubstantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the

General Assembly, with no further action required by the General Assembly." Pursuant to § 6 of ch. 25, subsection (h) was redesignated as (i) and (i) as (h); (p) was redesignated as (q) and (q) as (p); (w) was redesignated as (r); and (r) through (v) were redesignated as (s) through (w) to maintain alphabetical order.

Cited in *Relay Imp. Ass'n v. Sycamore Realty Co.*, 105 Md. App. 701, 661 A.2d 182 (1995).

§ 5-1602. Applicability of subtitle.

(a) *In general*. — Except as provided in subsection (b) of this section, this subtitle shall apply to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government on areas 40,000 square feet or greater.

(b) *Exceptions generally*. — The provisions of this subtitle do not apply to:

- (1) Any construction activity that is subject to § 5-103 of this title;
- (2) Any cutting or clearing of forest in areas governed by the Chesapeake Bay Critical Area Protection Law (Title 8, Subtitle 18 of this article);
- (3) Commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program under § 8-211 of the Tax-Property Article:
 - (i) That were completed before July 1, 1991; or
 - (ii) That were completed on or after July 1, 1991 on property that is not the subject of an application for a grading permit for development within 5 years after the logging or harvesting operation. However, after this 5-year period, the property shall be subject to this subtitle;
- (4) Any agricultural activity that does not result in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices;
- (5) The cutting or clearing of public utility rights-of-way or land for electric generating stations licensed pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of the Public Utility Companies Article, provided that:
 - (i) Any required certificates of public convenience and necessity have been issued in accordance with § 5-1603 (f) of this subtitle; and
 - (ii) The cutting or clearing of the forest is conducted so as to minimize the loss of forest;
- (6) Any routine maintenance of public utility rights-of-way;

(7) Any activity conducted on a single lot of any size or a linear project provided that:

(i) The activity does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest; and

(ii) The activity on the lot or linear project will not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan prepared under this subtitle;

(8) Any strip or deep mining of coal regulated under Title 15, Subtitle 5 or 6 of the Environment Article and any noncoal surface mining regulated under Title 15, Subtitle 8 of the Environment Article;

(9) Any activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or grandchild of the owner, if the activity does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest;

(10) A county that has and maintains 200,000 acres or more of its land area in forest cover; and

(11) The cutting or clearing of trees to comply with the requirements of 14 C.F.R. § 77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation.

(c) *Chesapeake Bay critical areas.* — For an application for subdivision or sediment and erosion control or grading for a site with more than 50% of the net tract area governed by Title 8, Subtitle 18 of this article, the Department or local authority may allow an applicant to extend critical area forest protection measures in lieu of meeting the requirements of this subtitle. (1991, ch. 255, § 1; 1992, ch. 22, § 1; 1995, ch. 630; 1997, ch. 559, § 2; 1998, ch. 653.)

Effect of use of State funds. — The use of State funds to support local government projects in Allegany and Garrett counties does not renders them subject to the Forest Conser-

vation Act despite a statutory exemption for counties with a certain level of forest cover. 86 Op. Att'y Gen. — (March 13, 2001).

§ 5-1603. Local forest conservation program.

(a) *Development; proposed program to be submitted; existing programs; obligations assigned to county.* — (1) A unit of local government having planning and zoning authority shall develop a local forest conservation program, consistent with the intent, requirements, and standards of this subtitle.

(2) By April 30, 1992 all units of government with planning and zoning authority shall submit a proposed forest conservation program, which meets or is more stringent than the requirements and standards of this subtitle, to the Department for its review and approval.

(3) A unit of local government which has an existing program of forest conservation, or subsequently adopts such a program prior to December 31, 1992, may continue to administer its program prior to approval by the Department of the local forest conservation program.

(4) A municipality which has planning and zoning authority may, with the concurrence of the county and the Department, assign its obligations under this subtitle to the county.

(b) *Approval to be given; revisions to be resubmitted.* — (1) By July 1, 1992 the Department shall either approve a proposed local forest conservation program as submitted by the local authority or provide a written notice of program elements needing revision.

(2) Local forest conservation programs requiring revisions shall be resubmitted to the Department within 2 months of the date the Department notified the local authority of the need for revisions.

(c) *Adopted program to be submitted; requirements; local ordinances, policies and procedures to be consistent with subtitle.* — (1) All units of local government with planning and zoning authority shall submit to the Department, by December 31, 1992, their adopted forest conservation program which meets or is more stringent than the requirements and standards of this subtitle:

(2) A local forest conservation program, which has been approved by the Department, shall include:

(i) A policy document and all applicable new and amended local ordinances relating to implementation of the regulated activities, exemptions, the review, approval and appeal processes, incentives, legal instruments for protection, enforcement program, and penalties; and

(ii) A technical manual which outlines submittal requirements for forest stand delineations, required information for the approval of a forest conservation plan, specific forest conservation criteria and protection techniques.

(3) (i) A local authority shall review and amend, as appropriate, all current local ordinances, policies and procedures that are inconsistent with the intent and requirements of this subtitle such as parking, road width, setback, curb and gutter, grading, and sidewalk requirements.

(ii) A local forest conservation program, when approved by the Department, may:

1. Allow clustering and other innovative land use techniques that protect and establish forests where open space is preserved, sensitive areas are protected, and development is physically concentrated; and

2. Waive the requirements of this subtitle for an area that was previously developed and is covered by paved surface at the time of application for subdivision plan, grading, or sediment control permit approval.

(d) *Failure to submit program; failure to adopt program.* — Failure to submit a proposed local forest conservation program under subsection (a) of this section or failure to adopt a program approved by the Department prior to December 31, 1992 under subsection (b) of this section shall result in the Department's assumption of review and approval of all forest conservation plans within the jurisdiction of that local authority.

(e) *Biennial review; program found to be deficient.* — (1) (i) The Department shall conduct a review of each local authority's program at least once every 2 years from the date of initial departmental approval.

(ii) In its biennial review, the Department shall evaluate the level of compliance with the performance standards and required forest conservation.

(2) If a local authority's program is found to be deficient by the Department, then the Department shall give notice and allow the local authority 90 days for compliance, after which the Department may assume review and approval of all forest conservation plans within the jurisdiction of the local authority until the deficiencies are corrected.

(f) *Public Service Commission.* — After December 31, 1992, the Public Service Commission shall give due consideration to the need to minimize the loss of forest and the provisions for afforestation and reforestation set forth in this subtitle together with all applicable electrical safety codes, when reviewing applications for a certificate of public convenience and necessity issued pursuant to § 7-204, § 7-205, § 7-207, or § 7-208 of the Public Utility Companies Article.

(g) *Recovery of costs.* — A local authority or the Department in its administration of a State forest conservation program in jurisdictions which do not have an approved local program in effect may establish reasonable and appropriate procedures for the recovery of all costs incurred in the development, implementation, administration, and enforcement of the local forest conservation program or the State forest conservation program for jurisdictions without an approved forest conservation program. (1991, ch. 255, § 1; 1992, ch. 22, § 1; 1993, ch. 489; 1994, ch. 556; 1997, ch. 559, § 2; 1998, ch. 653.)

Counties to develop and adopt a forest conservation program. — The Forest Conservation Act requires a county, like every other nonexempt local government with planning and zoning authority (except municipalities assigning the obligation to their counties), to

develop and adopt a forest conservation program. The statute does not permit a county to choose at its option either to adopt a program or, in the alternative, to allow the State's program to go into effect. 77 Op. Att'y Gen. 127 (April 29, 1992).

§ 5-1604. Forest stand delineation.

(a) *Required.* — Except as provided in subsection (b) (2) and (3) of this section, after December 31, 1992, or after the date on which a local program has been adopted under § 5-1603 of this subtitle, whichever occurs first, a person making application for subdivision or grading or sediment control permits on areas greater than 40,000 square feet shall submit a forest stand delineation for the entire site prepared by a licensed forester, licensed landscape architect, or other qualified professionals that may be approved by the State or a local authority in the manner required by the approved program.

(b) *Purpose; components; substitutions; simplification of process.* — (1) The forest stand delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation. Subject to paragraphs (2) and (3) of this subsection, and except when waived by the Department during approval or review of a local program, the forest stand delineation shall contain the following components:

(i) A topographic map delineating intermittent and perennial streams, and steep slopes over 25%;

(ii) A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more;

(iii) Forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types; and

(iv) Any other requirements necessary to carry out the purposes of this subtitle established in regulations adopted by the Department or imposed by a local authority.

(2) A concept plat or plan, preliminary plat or plan, sediment and erosion control plan, site plan, or other appropriate document, verified by a site visit if appropriate, may substitute for the forest stand delineation required by paragraph (1) of this subsection if:

(i) There is no forest on the site; or

(ii) No forest on the site is to be cut, cleared, or graded for the proposed use, and all forest on the site is to be subject to a long-term protective agreement.

(3) The Department shall provide for, and a local authority may adopt, a simplified process or processes for forest stand delineation under this section, including:

(i) *Limiting* required forest sampling to areas not proposed for protection under long-term protective agreements as long as all priority areas on the site are protected; and

(ii) Minimizing overlapping mapping and sampling requirements for sites where no disturbance of priority forest retention areas is contemplated.

(c) *Notification by Department upon receipt.* — Within 30 days from receipt of the forest stand delineation, the Department or local authority shall notify the applicant whether the forest stand delineation is complete and correct. If the Department or local authority fails to notify the applicant about the delineation within 30 days, the delineation shall be treated as complete and correct. The Department or local authority may require further information or provide for an extension of this deadline for an additional 15 days for extenuating circumstances. (1991, ch. 255, § 1; 1993, ch. 489; 1997, ch. 559, § 2.)

§ 5-1605. Forest conservation plan.

(a) *Plan required.* — Upon receipt of notice that the forest stand delineation is complete and correct, the applicant shall submit to the State or local authority a proposed forest conservation plan for the site.

(b) *Developed by.* — The forest conservation plan shall be developed by a licensed forester, licensed landscape architect, or other qualified professionals that may be approved by the State or a local authority.

(c) *Requirements.* — A proposed forest conservation plan shall contain:

(1) A map of the site drawn at the same scale as the grading or subdivision plan;

(2) A table listing the net tract area in square feet, the square foot area of forest conservation required for the site, and the square foot area of forest conservation provided by the applicant on-site and off-site, if applicable;

(3) A clear graphic indication of the forest conservation provided on the site showing areas where both retention of existing forest or afforestation, by any and all methods, is planned;

(4) An anticipated construction timetable, including the sequence for tree conservation procedures;

- (5) An afforestation or reforestation plan with a timetable and description of needed site and soil preparation, species, size, and spacing to be utilized;
- (6) Locations and types of protective devices to be used during construction activities to protect trees and areas of forest designated for conservation;
- (7) Limits of disturbance delineated;
- (8) Stockpile areas delineated;
- (9) A binding 2-year management agreement that details how the areas designated for afforestation or reforestation will be maintained to ensure protection or satisfactory establishment including:
 - (i) Watering; and
 - (ii) Reinforcement planting provisions if survival falls below required standards; and
- (10) Any other requirement established in regulations adopted by the Department, or imposed by a local authority.

(d) *Notification by Department upon receipt.* — Within 45 days from receipt of the forest conservation plan, the Department or local authority shall notify the applicant whether the forest conservation plan is complete. If the Department or local authority fails to notify the applicant about the forest conservation plan within 45 days, the plan shall be treated as complete and approved. The Department or local authority may require further information or provide for an extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the State or local authority may extend this deadline for extenuating circumstances. (1991, ch. 255, § 1; 1993, ch. 489; 1995, ch. 3, § 1; 2002, ch. 225.)

Effect of amendments. — Chapter 225, Acts 2002, effective Oct. 1, 2002, deleted "and approved" at the end of the first sentence in (d).

§ 5-1606. Afforestation; forest conservation thresholds.

(a) *Land use categories; afforestation requirements; contribution to Forest Conservation Fund; linear projects.* — (1) For the following land use categories, tracts having less than 20% of the net tract area in forest cover shall be afforested up to 20% of the net tract area:

- (i) Agriculture and resource areas; and
- (ii) Medium density residential areas.

(2) For the following land use categories, tracts having less than 15% of the net tract area in forest cover shall be afforested up to 15% of the net tract area:

- (i) Institutional development areas;
- (ii) High density residential areas;
- (iii) Mixed use and planned unit development areas; and
- (iv) Commercial and industrial use areas.

(3) Afforestation requirements must conform to the conditions in §§ 5-1607 and 5-1610 of this subtitle, including payment into the Forest Conservation Fund, if afforestation on-site or off-site cannot be reasonably accomplished.

(4) (i) The afforestation requirements under this subsection shall be accomplished within 1 year or 2 growing seasons after the completion of the development project.

(ii) If afforestation cannot be reasonably accomplished on-site or off-site, the requirement to contribute money to a Forest Conservation Fund under § 5-1610 of this subtitle shall be met within 90 days after the completion of the development project.

(5) Linear projects that involve no change in land use may not be subject to afforestation requirements.

(b) *Forest conservation thresholds — In general.* — There is a forest conservation threshold established for all land use categories as provided in subsection (c) of this section. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of $\frac{1}{4}$ acre planted for every 1 acre removed to a ratio of 2 acres planted for every 1 acre removed.

(c) *Same — Established for land use categories.* — After every reasonable effort to minimize the cutting or clearing of trees and other woody plants is exhausted in the development of a subdivision plan and grading and sediment control activities and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the Forest Conservation Fund, according to the formula set forth in subsection (b) of this section and consistent with the following forest conservation thresholds for the applicable land use category:

- (1) Agricultural and resource areas: 50% of net tract area;
- (2) Medium density residential areas: 25% of net tract area;
- (3) Institutional development areas: 20% of net tract area;
- (4) High density residential areas: 20% of net tract area;
- (5) Mixed use and planned unit development areas: 15% of net tract area;

and

- (6) Commercial and industrial use areas: 15% of net tract area.

(d) *Reforestation ratio — Cleared above the threshold.* — (1) Subject to the provisions of paragraph (2) of this subsection, for all existing forest cover measured to the nearest $\frac{1}{10}$ acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of $\frac{1}{4}$ acre planted for every 1 acre removed.

(2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection.

(e) *Same — Cleared below the threshold.* — For all existing forest cover measured to the nearest $\frac{1}{10}$ acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for every 1 acre removed.

(f) *Time period; contribution to Forest Conservation Fund.* — (1) The reforestation requirements under this section shall be accomplished within 1 year or 2 growing seasons after completion of the development project.

(2) If reforestation cannot be reasonably accomplished on-site or off-site, the requirement to contribute money to a Forest Conservation Fund under § 5-1610 of this subtitle shall be met within 90 days after completion of the development project. (1991, ch. 255, § 1; 1992, ch. 22, § 1; 1997, ch. 559, § 2.)

§ 5-1607. Preferred sequence for afforestation and reforestation; priorities; provisions developed by local government; placement of forested, afforested, or reforested land.

(a) *Preferred sequence for afforestation and reforestation.* — The preferred sequence for afforestation and reforestation shall be established by the State or local authority in accordance with the following after all techniques for retaining existing forest cover on-site have been exhausted:

(1) Those techniques that enhance existing forest and involve selective clearing or supplemental planting on-site;

(2) On-site afforestation or reforestation may be utilized where the retention options have been exhausted. In those cases, the method shall be selected in accordance with subsection (b) of this section, and the location shall be selected in accordance with subsection (d) of this section;

(3) (i) Off-site afforestation or reforestation in the same watershed or in accordance with an approved master plan may be utilized where the applicant has demonstrated that no reasonable on-site alternative exists, or where:

1. Any on-site priority areas for afforestation or reforestation have been planted in accordance with subsection (d) of this section; and

2. The applicant has justified to the satisfaction of the State or local jurisdiction that environmental benefits associated with off-site afforestation or reforestation would exceed those derived from on-site planting;

(ii) In these cases, the method shall be selected in accordance with subsection (b) of this section, and the location shall be selected in accordance with subsection (d) of this section; and

(iii) Off-site afforestation or reforestation may include the use of forest mitigation banks which have been so designated in advance by the State or local forest conservation program which is approved by the Department; and

(4) The State or local jurisdiction may allow an alternative sequence for a specific project if necessary to achieve the objectives of a local jurisdiction's land use plans or policies or to take advantage of opportunities to consolidate forest conservation efforts.

(b) *Standards and options.* — Standards for meeting afforestation or reforestation requirements shall be established by the State or local program using one or more of the following methods:

(1) Forest creation in accordance with a forest conservation plan using one or more of the following:

(i) Transplanted or nursery stock;

(ii) Whip and seedling stock; or

(iii) Natural regeneration where it can be shown to adequately meet the objective of the forest conservation plan.

(2) The use of street trees in a municipal corporation with a tree management plan, in an existing population center designated in a county master plan that has been adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992, or in any other designated area approved by the Department as part of a local program, under criteria established by the local program, subject to the approval of the Department, using:

(i) Street trees as a permissible step in the priority sequence for afforestation or reforestation and, based on a mature canopy coverage, may grant full credit as a mitigation technique; and

(ii) Acquisition as a mitigation technique of an off-site protective easement for existing forested areas not currently protected, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest cover protected.

(3) When all other options, both on-site and off-site, have been exhausted, landscaping as a mitigation technique, conducted under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of area.

(c) *Priority for retention and protection.* — The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority that reasonable efforts have been made to protect them and the plan cannot reasonably be altered:

(1) Trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, and critical habitats;

(2) Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

(3) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the Department;

(4) Trees that are part of a historic site or associated with a historic structure or designated by the Department or local authority as a national, State, or local Champion Tree; and

(5) Trees having a diameter measured at 4.5 feet above the ground of:

(i) 30 inches; or

(ii) 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by the Department.

(d) *Priority for afforestation or reforestation.* — The following shall be considered priority for afforestation or reforestation:

(1) Establish or enhance forest buffers adjacent to intermittent and perennial streams and coastal bays to widths of at least 50 feet;

(2) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and, where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;

(3) Establish or enhance forest buffers adjacent to critical habitats where appropriate;

(4) Establish or enhance forested areas in 100-year floodplains;

(5) Establish plantings to stabilize slopes of 25% or greater and slopes of 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;

(6) Establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way;

(7) Establish forest areas adjacent to existing forests so as to increase the overall area of contiguous forest cover, when appropriate; and

(8) Use native plant materials for afforestation or reforestation, when appropriate.

(e) *Provisions developed by local government.* — (1) As part of the development of a forest conservation program, the State or local government shall develop provisions for:

(i) Preservation of areas described in subsections (c) and (d) (1) and (3) of this section;

(ii) Retention as forest of all land forested, afforested, or reforested under this subtitle; and

(iii) Limitation of uses of forest to those that are not inconsistent with forest conservation, such as recreational activities and forest management under subsection (f) of this section.

(2) The provisions required in paragraph (1) of this subsection may include protective agreements for areas of forest conservation, including conservation easements, deed restrictions, and covenants.

(f) *Placement of land forested, afforested or reforested under this subtitle.* — Except for land that is preserved under subsection (e) of this section, an owner may place land that is forested, afforested, or reforested under this subtitle in the forest conservation and management program under § 8-211 et seq. of the Tax - Property Article or in a forest management plan prepared by a licensed forester and approved by the local authority or the State. Reforestation shall be required when the final regeneration harvest is complete or if determined to be necessary due to the lack of adequate natural regeneration. (1991, ch. 255, § 1; 1992, ch. 22, § 1; 1993, ch. 5, § 1; ch. 489; 1997, ch. 559, § 2; 2000, ch. 61, § 1; 2002, ch. 225.)

Effect of amendments. — Chapter 225, Acts 2002, effective Oct. 1, 2002, substituted "the State or local government" in the introductory language of (e) (1).
"the State or local government" for "a local

§ 5-1608. Review of forest conservation plan concurrent with State or local review for subdivision plan, grading or sediment control permits.

(a) *Concurrent review.* — The review of the forest conservation plan shall be concurrent with the review process of the State or local authority for the subdivision plan, or the grading or sediment control permit, whichever may be submitted first.

(b) *Approved forest conservation plan.* — Before the approval of the final subdivision plan, or the issuance of the grading or sediment control permit by the State or local authority, the applicant shall have an approved forest conservation plan that shall include the requirements in §§ 5-1605, 5-1606, and 5-1607 of this subtitle.

(c) *Penalty; payment.* — (1) Any person found to be in noncompliance with this subtitle, regulations adopted under this subtitle, the forest conservation plan or the associated 2-year management agreement shall be assessed by the Department or local authority, the penalty of 30 cents per square foot of the area found to be in noncompliance with required forest conservation.

(2) This amount shall be paid into the appropriate local or State Forest Conservation Fund. (1991, ch. 255, § 1.)

§ 5-1609. Regulations; guidance manuals; forest resource inventory.

(a) *Regulations; guidance manuals.* — (1) By December 31, 1991, the Department, after consulting with local government and the real estate development, building, and environmental communities, shall adopt regulations, including the development of guidance manuals to:

(i) Implement this subtitle and set requirements and standards which establish:

1. Standards of performance required in forest stand delineations and forest conservation plans including the submittal process;
2. Criteria for local forest conservation programs; and
3. Implementation processes for the Department's administration in the absence of a local forest conservation program;

(ii) Assist and guide local authorities in the development of their local forest conservation program by providing:

1. Training of local officials; and
2. A model local government ordinance that meets the requirements of this subtitle; and

(iii) Assist developers, planners, surveyors, engineers, foresters, biologists, and landscape architects in:

1. Developing methodology and gathering natural resource information required in the preparation of a forest stand delineation and a forest conservation plan;
2. Determining the size, location, and orientation of forest areas to be retained;
3. Determining the size, location, and orientation of areas to be afforested or reforested;
4. Implementing protection techniques and devices used in preserving specimen trees or areas designated for retention during construction; and
5. Determining species, spacing, and timing of afforestation or reforestation.

(2) All provisions of the guidance manual that are not specifically noted as standards or minimum requirements shall be deemed recommendations by the Department for the development of the local program.

(b) *Statewide forest resource inventory.* — By December 31, 1992, the Department shall prepare and provide to local authorities a statewide forest resource inventory that shall:

(1) Be updated every 5 years or as deemed appropriate by the Department; and

(2) Include a list of potential sites for reforestation or afforestation of both publicly and privately owned land on a county by county basis. (1991, ch. 255, § 1; 1993, ch. 489.)

§ 5-1610. Forest Conservation Fund; local forest conservation fund.

(a) *"Fund" defined.* — In this section, "Fund" means the Forest Conservation Fund.

(b) *Established.* — There is a Forest Conservation Fund in the Department.

(c) *Contribution; rate.* — Except as provided in subsection (h) of this section, if any person subject to this subtitle demonstrates to the satisfaction of the appropriate State or local authority that the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person shall contribute money at a rate of 10 cents per square foot of the area of required planting to the Fund.

(d) *Funds deposited.* — Money collected by the State or a local authority under § 5-1608(c) or § 5-1612 of this subtitle for noncompliance with this subtitle or regulations adopted under this subtitle or for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the Fund.

(e) *Time period for reforestation or afforestation; return of funds.* — (1) The Department shall accomplish the reforestation or afforestation for which the money is deposited within 2 years or 3 growing seasons, as appropriate, after receipt of the money.

(2) Money deposited in the Fund under subsection (c) of this section shall remain in the Fund for a period of 2 years or 3 growing seasons, and at the end of that time period, any portion that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

(f) *Management of Fund.* — (1) (i) Money deposited in the Fund under subsection (c) of this section may only be spent on reforestation and afforestation, including site identification, acquisition, and preparation, and may not revert to the General Fund of the State.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.

(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.

(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the Department. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any

credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(g) *Disposition of funds.* — Money deposited in the Fund under subsection (d) of this section may be used by the Department for the purpose of implementing this subtitle.

(h) *Local forest conservation fund — Rate.* — In lieu of a State Forest Conservation Fund, any local authority with an approved forest conservation program may establish a forest conservation fund, to be administered by the local authority, to allow a payment by any person who has demonstrated to the satisfaction of the local authority that the requirements for reforestation and afforestation on-site and off-site cannot be reasonably accomplished. The rate shall be 10 cents per square foot of the area required to be replanted.

(i) *Same — Time period for money deposited; return of funds.* — Money deposited in the local forest conservation fund under subsection (h) of this section shall remain in the fund for a period of 2 years or 3 growing seasons. At the end of that time period, any portion that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

(j) *Same — Management of fund.* — (1) Money deposited in the local forest conservation fund under subsection (h) of this section may only be spent on reforestation and afforestation, including the costs directly related to site identification, acquisition, prepurchase, and preparation, and may not revert to any other local general fund.

(2) (i) Except as provided in subparagraph (ii) or (iii) of this paragraph, the reforestation or afforestation requirement under this subsection shall occur in the county and watershed in which the project is located.

(ii) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the State in which the project is located.

(iii) If the reforestation or afforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then the reforestation or afforestation shall be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank in accordance with regulations of the local forest conservation program. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(k) *Same — Money deposited; rate.* — Money collected by the local authority under § 5-1608(c) of this subtitle for noncompliance with this subtitle or regulations or ordinances adopted under this subtitle for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the local fund. The rate shall be 30 cents per square foot of the area found to be in noncompliance with the required forest conservation.

(l) *Same — Disposition of funds.* — Money deposited in a local forest conservation fund under subsection (k) of this section may be used by the local

authority for purposes related to implementing this subtitle. (1991, ch. 255, § 1; 1993, ch. 489; 1997, ch. 14, § 1; ch. 559, § 2; 2002, ch. 225; 2004, ch. 550.)

Effect of amendments. — Chapter 225, Acts 2002, effective Oct. 1, 2002, inserted "or § 5-1612" in (c).

Chapter 550, Acts 2004, effective July 1, 2004, deleted "Forest Conservation" preceding "Fund" throughout the section; inserted

present (a) and redesignated the remaining subsections accordingly; substituted "(h)" for "(g)" in (c), (i), and (j)(1); substituted "(c)" for "(b)" in (e)(2) and (f)(1)(i); added (f)(1)(ii); substituted "(d)" for "(c)" in (g); substituted "(k)" for "(j)" in (l); and made minor stylistic changes.

§ 5-1610.1. Forest mitigation banks.

(a) *Standards; regulations.* — The Department shall develop standards and adopt regulations for the creation and use of forest mitigation banks, including criteria for tracking, crediting, maintaining, bonding, and reporting mitigation bank activities.

(b) *Procedures for establishment.* — A local jurisdiction may develop procedures for establishing forest mitigation banks as part of its forest conservation program.

(c) *Location.* — Mitigation banks may be permitted only in priority areas as identified in § 5-1607 (d) of this subtitle or as identified in a comprehensive plan adopted by a local jurisdiction.

(d) *Sequence for retention, reforestation, or afforestation to be unaltered.* — The establishment of mitigation banks and their use may not alter the sequence for retention, reforestation, or afforestation on a development site as outlined in § 5-1607 of this subtitle.

(e) *Criteria for use and establishment.* — Criteria established by local or State programs for the use and establishment of forest mitigation banks shall include protection and conservation in perpetuity of forest mitigation banks consistent with reasonable management plans, through methods that include easements, covenants, or similar mechanisms that shall be in place at the time credits are withdrawn.

(f) *Construction of section.* — This section may not be construed to require the Department or a local jurisdiction to:

- (1) Establish or fund State or local mitigation banks;
- (2) Fund the establishment of forest mitigation banking by the private sector; or
- (3) Use State or local government land for forest mitigation banking.

(g) *Credits; debits.* — (1) Credits in a mitigation bank may not be approved for debiting until construction of the mitigation bank is complete.

(2) A mitigation bank shall maintain sufficient credits in reserve to cover anticipated expenses of completion of the mitigation bank. (1997, ch. 559, § 2.)

§ 5-1610.2. Pilot Program for Forest Retention Banks [Section subject to abrogation].

(a) *In general; administration.* — (1) Notwithstanding any other provision of this title, the Department shall establish a 2-year pilot program that authorizes a landowner to use a forested stream buffer established under a

contract with the federal Conservation Reserve Enhancement Program in order to create a forest retention bank.

(2) Carroll County and Frederick County shall administer the pilot program.

(b) *Goals.* — The goals of the pilot program are to increase the number of forested stream buffers in the State, to enhance their quality, and to ensure their permanent protection.

(c) *Requirements for creation.* — A landowner may create a forest retention bank if:

(1) The land is not protected by an existing conservation easement; and

(2) The landowner grants a forest conservation easement to the Department that protects the forest retention bank in perpetuity.

(d) *Conflicts between State and federal contract provisions.* — If a term or condition of the landowner's federal Conservation Reserve Enhancement Program contract is in conflict with a term or condition of the forest conservation easement, the term or condition of the federal Conservation Reserve Enhancement Program contract shall prevail during the term of the contract.

(e) *Mitigation.* — Mitigation through creation of a forest retention bank shall be credited at a rate of 2.5 acres per each acre of mitigation required.

(f) *Duties of Department.* — The Department:

(1) Shall conduct a field inspection of each forest retention bank in order to ensure that existing forested areas are maintained and properly credited in the bank;

(2) Shall evaluate the 2-year pilot program to determine its effectiveness in meeting the goals under subsection (b) of this section; and

(3) On or before December 31, 2004, shall report, in accordance with § 2-1246 of the State Government Article, to the House Environmental Matters Committee and the Senate Education, Health, and Environmental Affairs Committee on the effectiveness of the pilot program. (2002, ch. 551.)

Editor's note. — Section 2, ch. 551, Acts 2002, provides that "this Act shall take effect July 1, 2002. It shall remain effective for a period of 3 years and, at the end of June 30, 2005, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect."

(Abrogation of section effective June 30, 2005.)

§ 5-1610.2. Pilot Program for Forest Retention Banks.

Abrogated.

Editor's note. — Section 2, ch. 551, Acts 2002, provides that "this Act shall take effect July 1, 2002. It shall remain effective for a period of 3 years and, at the end of June 30, 2005, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect." This section is set out above as it will appear after June 30, 2005, unless further action is taken by the General Assembly.

§ 5-1611. Variances.

(a) *Provided for.* — In the preparation of the State or local forest conservation programs, the State and local authorities shall provide for the granting of

variances to the requirements of this subtitle, where owing to special features of a site or other circumstances, implementation of this subtitle would result in unwarranted hardship to an applicant.

(b) *Guidelines for variance procedures.* — Variance procedures adopted under this section shall:

(1) Be designed in a manner consistent with the spirit and intent of this subtitle; and

(2) Assure that the granting of a variance will not adversely affect water quality. (1991, ch. 255, § 1.)

§ 5-1612. Enforcement.

(a) *In general.* — (1) The enforcement provisions in this section and § 5-1608 of this subtitle are in lieu of any other provision in this title.

(2) In addition to the enforcement authority granted the Department, the enforcement provisions of this section may be exercised by any local authority that has adopted a forest conservation program, in addition to any enforcement provisions available to the local authority.

(b) *Violation.* — The Department or a local authority may revoke an approved forest conservation plan for cause, including violation of conditions of the plan, obtaining a plan approval by misrepresentation, failing to disclose a relevant or material fact, or change in conditions. The Department or a local authority shall notify the violator in writing and provide an opportunity for a hearing.

(c) *Stop work order.* — The Department or a local authority may issue a stop work order against any person who violates any provision of this subtitle or any regulation, order, approved plan, or management agreement.

(d) *Penalties.* — (1) A person who violates any provision of this subtitle or any regulation, order, plan, or management agreement under this subtitle is liable for a penalty not exceeding \$1,000 which may be recovered in a civil action brought by the Department or a local authority. Each day a violation continues is a separate violation under this subtitle.

(2) The court may issue an injunction requiring the person to cease the violation and take corrective action to restore or reforest an area. (1991, ch. 255, § 1; 1993, ch. 489.)

§ 5-1613. Annual report.

On or before July 1 of each year, the Department shall submit, subject to § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee a statewide report, compiled from local authorities' reports to the Department, on:

(1) The number, location, and type of projects subject to the provisions of this subtitle;

(2) The amount and location of acres cleared, conserved, and planted, including any areas which utilize forest mitigation bank credits, in connection with a development project;

(3) The amount of reforestation and afforestation fees and noncompliance penalties collected and expended;

(4) The costs of implementing the forest conservation program; and

(5) The size, location, and protection of any local forest mitigation banks which are created under a local or State program. (1991, ch. 255, § 1; 1992, ch. 22, § 1; 1994, ch. 662, § 6; 1997, ch. 559, § 2; ch. 635, § 9; ch. 636, § 9; 2003, ch. 21, § 1.)

Effect of amendments. — Chapter 21, Acts of 2003, approved April 8, 2003, substituted "Education, Health," for "Economic" in the introductory paragraph.

Subtitle 17. Leasing of State Oil and Gas Resources.

§ 5-1701. Regulations; lease required; restrictions on leases.

(a) *Regulations for procedures and standards for award; lease required for production.* — (1) The Board of Public Works shall adopt regulations establishing procedures and standards for awarding any oil or natural gas lease for production or reserve under lands or waters of the State.

(2) An area leased for reserve may not be put into production until the lessee obtains a lease for production pursuant to § 5-1702 of this subtitle.

(b) *Regulations for nomination of areas for possible leasing.* — The Board of Public Works shall adopt regulations establishing a system by which persons may periodically nominate areas beneath lands or waters of the State for possible leasing for production or reserve of oil or natural gas.

(c) *Restrictions on leases.* — The Board of Public Works may not enter into any lease under this section that would preclude or interfere with the public or private harvesting of finfish or shellfish. (1988, ch. 778; 1995, ch. 488, §§ 5, 16.)

§ 5-1702. Statement of environmental, fiscal, and economic impact.

(a) *Preparation.* — Before the Board of Public Works may solicit bids for or award any lease for production of oil or natural gas from beneath lands or waters of the State, and after receiving the written recommendation of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (if the leased area is located in the State's critical areas) and the advisory comments of the Secretaries of Budget and Management, Natural Resources, the Environment, and Business and Economic Development and the Director of Planning, the Board of Public Works shall direct the Secretary of Natural Resources in consultation with the Secretaries of the Environment, Business and Economic Development, and Budget and Management and the Director of Planning to prepare a statement of environmental, fiscal, and economic impact of the proposed lease.

(b) *Filing; availability to public; costs.* — (1) The statement of environmental, fiscal, and economic impact shall be prepared and filed within 6 months after the direction of the Board of Public Works. However, the Board of Public

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Chapter 22A. FOREST CONSERVATION - TREES.*

Article I. General.

Sec. 22A-1. Short title.

Sec. 22A-2. Findings and purpose.

Sec. 22A-3. Definitions.

Sec. 22A-4. Applicability.

Sec. 22A-5. Exemptions.

Sec. 22A-6. Exemptions—Special provisions.

Sec. 22A-7. Activities or development not exempt under section 22A-5—Special transition provision.

Sec. 22A-8. Utility lines.

Sec. 22A-9. County Highway Projects.

*Editor's note—2005 L.M.C., ch. 32, § 2, repeals 1992 L.M.C., ch. 4, § 2, set forth below.

Chapter 22A is derived from 1992 L.M.C., ch. 4, § 1. Sections 2, 3, 4 and 5 read as follows:

Sec. 2. Setting of in lieu fees and maximum administrative civil penalty.

Until altered by law or resolution, the fee in lieu of afforestation or reforestation is 30 cents per square foot of the area of required planting and the maximum administrative civil penalty authorized is \$1.00 per square foot of the area found to be in noncompliance.

Sec. 3. Contingency on Commission resolution.

Until express authority for Planning Board administration and enforcement of Article II, as enacted in Section 1 of this Act, is provided under State law, this Act is contingent on and does not become effective until the Maryland-National Capital Park and Planning Commission adopts a resolution under Section 7-111(f) of Article 28 of the Maryland Code allocating the functions provided under this Act to the Montgomery County Planning Board.

Sec. 4. Administrative Actions.

The Chief Administrative Officer is expressly authorized to initiate all necessary budgetary, personnel, and other administrative actions to implement this Act. Until a County Arborist is appointed, the responsibility of the Arborist under this Act to approve proposed commercial logging and timber harvesting operations, review proposed variances, and review certain reports, must be exercised by the Director of the Department of Environmental Protection or the Director's designee.

Sec. 5. Effective Date; Delayed Provisions.

Except as provided in Section 3 and this Section, this Act takes effect 91 days following the date that it becomes law, Section 22A-26 (Regulations) as enacted by Section 1 of this Act takes effect on that date. All other provisions of this Act take effect on July 1, 1992.

These requirements by State law: 1992, ch. 643, and Park and Planning Resolution No. 92-07.

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Article II. Forest Stand Delineations and Forest Conservation Plans.

Sec. 22A-10. General.

Sec. 22A-11. Application, review, and approval procedures.

Sec. 22A-12. Retention, afforestation, and reforestation requirements.

Sec. 22A-13. Forest mitigation banks.

Sec. 22A-14. Reserved.

Article III. Enforcement, Appeals, and Variances.

Sec. 22A-15. Inspections and notification.

Sec. 22A-16. Penalties and other remedies.

Sec. 22A-17. Corrective actions.

Sec. 22A-18. Plan suspension and revocation.

Sec. 22A-19. Noncompliance with exemption conditions.

Sec. 22A-20. Notice, hearings, and appeals.

Sec. 22A-21. Variance provisions.

Secs. 22A-22--22A-25. Reserved.

Article IV. Administration.

Sec. 22A-26. Regulations.

Sec. 22A-27. Forest conservation fund.

Secs. 22A-28, 22A-29. Reserved.

Article V. County Arborist.

Sec. 22A-30. County arborist.

Sec. 22A-31. Forest Conservation Advisory Committee.

ARTICLE I. GENERAL

Sec. 22A-1. Short title.

This Chapter may be referred to as the Montgomery County Forest Conservation Law. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-2. Findings and purpose.

- (a) *Findings.* The County Council finds that trees and forest cover constitute an important natural resource. Trees filter groundwater, reduce surface runoff, help alleviate flooding, and supply necessary habitat for wildlife. They cleanse the air, offset the heat island effects of urban development, and reduce energy needs. They improve the quality of life in a community by providing for recreation, compatibility between different land uses, and aesthetic appeal. The Council finds that tree loss as a result of development and other land disturbing activities is a serious problem in the County.
- (b) *Purpose.* The purpose of this Chapter is to:
 - (1) save, maintain, and plant trees and forested areas for the benefit of County residents and future generations;
 - (2) establish procedures, standards, and requirements to minimize tree loss as a result of development and to protect trees and forests during and after construction or other land disturbing activities;
 - (3) establish procedures, standards, and requirements for afforestation and reforestation of land subject to an application for development approval or a sediment control permit;
 - (4) establish a fund for future tree conservation projects, including afforestation and reforestation; and
 - (5) provide a focused and coordinated approach for County forest conservation activities. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-3. Definitions.

In this Chapter, the following terms have the meanings indicated:

Afforestation means the establishment of forest or tree cover in accordance with this Chapter on an area from which it has always or very long been absent, or the planting of open areas which are not in forest cover.

Agricultural activity means farming activities conducted as part of a recognized commercial enterprise, including: plowing, tillage, cropping, installation of best management practices,

seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, and the cultivation of orchard, nursery, and other products.

Agricultural and resource area means an undeveloped area zoned for a density of less than or equal to one dwelling unit per 5 acres.

Champion tree means the largest tree of its species in the County, as designated by the County Forest Conservancy District Board or its designee.

Commercial and industrial uses means manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yards, and parking areas.

Commercial logging or timber harvesting operation means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

Declaration of intent means a signed and notarized statement by a landowner that the cutting of trees on the landowner's property:

- (1) is for purposes exempted under this Chapter; and
- (2) will not circumvent the requirements of this Chapter.

Development plan means a plan or an amendment to a plan approved under Division 59-D-1 of Chapter 59.

Development project completion means the date or event identified in the forest conservation plan agreement, but no later than the date on which the first use-and-occupancy permit is issued for the development (or activity) subject to the preliminary plan of subdivision or sediment control permit or, if a use-and-occupancy permit is not required, the date on which the final building inspection or sediment control inspection (for activities not involving building) is conducted by the Department of Permitting Services. A staged development may have more than one completion date.

District Council means the County Council in its capacity, under Article 28 of the Maryland Code, to act on planning the zoning matters for the Maryland-Washington Regional District.

Equestrian Facility: Any building, structure, or land area that is primarily used for the care, breeding, boarding, rental, riding, sport eventing, or training of horses or ponies, the teaching of equestrian skills, or competitive equestrian events.

Floodplain (100-year) means an area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood.

Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand. *Forest* includes:

- (1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; and
- (2) forest areas that have been cut but not cleared.

Forest does not include an orchard.

Forest conservation means the retention of existing forest or the creation of new forest at the levels set by the Planning Board or Planning Director.

Forest conservation fund means a special fund maintained by the County to be used for purposes specified in Section 22A-27.

Forest conservation plan means a plan approved under Article II.

Forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of $\frac{1}{4}$ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed.

Forest cover means the area of a site meeting the definition of forest.

Forest mitigation banking means the intentional preservation, restoration, or creation of forests undertaken expressly to provide credits for afforestation or reforestation requirements.

Forest stand delineation means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activities.

High-density residential area means an area zoned for densities greater than one dwelling unit per 40,000 square feet, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

Institutional development area means land occupied by uses such as schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, fire stations, golf courses, recreation areas, parks, and cemeteries. In this Chapter, *institutional development* does not include a religious institution which is a permitted use in any zone and would not require a special exception.

Land disturbing activities has the same meaning as in Chapter 19.

Linear project means a project whose configuration is elongated with nearly parallel sides and used to transport a utility product or public service not otherwise to be constructed or improved as part of an application for subdivision approval, such as electricity, gas, water, sewer, communications, trains, pedestrians, and vehicles. A linear project may traverse fee simple properties through defined boundaries or through easement rights.

Lot means for the purpose of this Chapter a tract of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined under Section 50-1, without an approved forest stand delineation and forest conservation plan.

Mandatory referral means the required review by the Planning Board of projects or activities to be undertaken by governmental agencies and private and public utilities under Section 7-112 of Article 28 of the Maryland Code.

Medium-density residential area means an area zoned for a density greater than one dwelling unit per 5 acres and less than or equal to one dwelling unit per 40,000 square feet, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

Mixed-use development means a single, relatively high-density development project, usually commercial in nature, which includes 2 or more types of uses.

Municipal corporation means a municipality without planning and zoning authority or which has assigned its responsibilities under Subtitle 16 of the Natural Resources Article of the Maryland Code to the County.

Natural regeneration means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

Net tract area means the total area of a tract, including both forested and unforested areas, to the nearest 1/10 acre, reduced by road or utility rights-of-way which will not be improved as part of the development application. However, in agriculture and resource areas, *net tract area* is the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities. For a linear project, *net tract area* is the area of a right-of-way width or the limits of disturbance as shown on the development application, whichever is greater.

Nontidal wetland means an area regulated as a nontidal wetland under Title 8, Subtitle 12, of the Natural Resources Article of the Maryland Code.

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Obligee means a person obligated under a financial security instrument to meet certain regulatory requirements under Article II.

Person means:

- (1) the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units,
- (2) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind,
- (3) any partnership, firm, common ownership community or other homeowners' association, public or private corporation or any of their affiliates or subsidiaries, or
- (4) any other entity.

Planned unit development means a development comprised of a combination of land uses or varying intensities of the same land use, having at least 20 percent of the land permanently dedicated to open space, and in accordance with an integrated plan that provides flexibility in land use design approved by the District Council under Division 59-D-1 or by the Planning Board under Division 59-D-2 of Chapter 59.

Planning Board means the County Planning Board of the Maryland-National Capital Park and Planning Commission.

Planning Director means the Director of the Montgomery County Park and Planning Department, or the Director's designee.

Preliminary plan of subdivision means a plan for a proposed subdivision or resubdivision prepared and submitted for approval by the Planning Board under Chapter 50 before preparation of a subdivision plat.

Project plan means a plan or an amendment to a plan approved under Division 59-D-2 of Chapter 59.

Public utility means:

- (1) the transmission lines and the electric generating stations licensed under Article 78, Section 54A and 54B or 54-I of the Maryland Code; and
- (2) water, sewer, electric, gas, telephone, and cable service facilities and lines.

Reforestation or *reforested* means the creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground within 7 years. *Reforestation* for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

Retention means the deliberate holding and protecting of existing trees and other plants on the site.

Sediment control permit means a permit required to be obtained for certain land disturbing activities:

- (1) under Chapter 19, Article I;
- (2) from the Washington Suburban Sanitary Commission for major utility construction as defined under regulations of the Commission; or
- (3) from a municipal corporation.

Site plan means a plan or an amendment to a plan approved under Division 59-D-3 of Chapter 59.

Special exception means a use approved under Article 59-G of Chapter 59.

Special Protection Area (SPA) means a geographic area designated by the County Council under Section 19-62(a).

Technical Manual means a detailed guidance document used for administration of this Chapter that is adopted by the Planning Board under Section 22A-26.

Timber harvesting means a tree cutting operation affecting one or more acres of forest or developed woodland within a one year period that disturbs 5,000 square feet or more of forest floor. Timber harvesting does not include grubbing and clearing of root mass.

Tract means the property subject to a development application or a sediment control permit, as described by deed or record plat.

Tree means a large, woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

Tree cover means the combined area, in square feet, of the crowns of all trees on a tract. For replanting purposes, *tree cover* is the typical crown area for the specific tree at 20 years.

Tree save plan means a plan prepared in conjunction with a development application indicating where trees are to be retained or planted, including the establishment of conservation areas.

Variance means relief from this Chapter. *Variance* does not mean a subdivision or zoning variance.

Watershed means all lands lying within an area described as a watershed in the Countywide Stream Protection Strategy. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 19, § 1; 2002 L.M.C., ch. 16, § 2; 2004 L.M.C., ch. 20, § 1; 2006 L.M.C., ch. 35, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-4. Applicability.

Except as otherwise expressly provided in this Chapter, this Chapter applies to:

- (a) a person required by law to obtain development plan approval, diagrammatic plan approval, project plan approval, preliminary plan of subdivision approval, or site plan approval;
- (b) a person required by law to obtain special exception approval or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a);
- (c) a person who performs any cutting or clearing, or any other land disturbing activity that would directly threaten the viability of, any champion tree, wherever located;
- (d) a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger which is not exempt under subsection 22A-5(f);
- (e) highway construction not exempt under subsections 22A-5(e) or (p); and
- (f) a public utility not exempt under subsections 22A-5(g), (o)(1) and (2), or (p).

Any person who expects to cut, clear, or grade more than 5000 square feet of forest or any champion tree, and who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6, 22A-7, or 22A-8, must notify the Planning Director in writing before performing any cutting, clearing, or grading and seek confirmation from the Director that the cutting, clearing, or grading is in fact exempt from Article II. Failing to notify the Director as required by this Section, or performing any cutting, clearing, or grading before the Director confirms that an exemption applies, is a violation of this Chapter.

The Planning Director must notify the Department of Permitting Services if this Chapter would apply to any cutting, clearing, or grading of which the Department would otherwise not be notified. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1; 2006 L.M.C., ch. 35, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-5. Exemptions.

The requirements of Article II do not apply to:

- (a) an activity conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:
 - (1) does not require a special exception;
 - (2) does not result in the cutting, clearing, or grading of:
 - (A) more than a total of 40,000 square feet of forest;
 - (B) any forest in a stream buffer,
 - (C) any forest on property located in a special protection area which must submit a water quality plan,
 - (D) any specimen or champion tree, or
 - (E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and

- (3) is subject to a declaration of intent filed with the Planning Director stating that the lot will not be the subject of additional regulated activities under this Chapter within 5 years of the cutting, clearing, or grading of forest;
- (b) an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2). Agricultural support buildings and related activities are exempt only if built using best management practices;
- (c) a tree nursery;
- (d) (1) a commercial logging and timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that:
 - (A) is completed before July 1, 1991, or is completed on or after July 1, 1991, and the property on which the cutting or clearing is conducted is not the subject of an application for development within 5 years after the sediment control permit has been issued;
 - (B) has received approval from the County Arborist or designee that the logging or timber harvesting plan is not inconsistent with County forest management objectives and is otherwise appropriate; and
 - (C) has received a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19.
- (2) The Department of Permitting Services must send the Planning Director a copy of all sediment control permits issued for commercial logging and timber harvesting operations.
- (3) The requirements of this subsection apply to commercial logging and timber harvesting operations on agricultural land;
- (e) a State or County highway construction activity that is subject to Section 5-103 of the Natural Resources Article of the Maryland Code, or Section 22A-9;
- (f) a governmental project reviewed for forest conservation purposes by the State Department of Natural Resources under the Code of Maryland Regulations;
- (g) except for the clearing of access roads, routine maintenance of public utility easements and rights-of-way;

- (h) utility or other work that is of an emergency nature;
- (i) noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code;
- (j) a sediment control permit approved before July 1, 1991, or if amended after that date at the initiation of the permittee, that does not result in the cutting of more than 5,000 additional square feet of forest;
- (k) any lot covered by a preliminary plan of subdivision or site plan that did not receive a sediment control permit before July 1, 1991, and for which the preliminary plan of subdivision or site plan:
 - (1) was approved before July 1, 1984, and has less than 40,000 square feet of forest cover; or
 - (2) was approved or extended between July 1, 1984 and July 1, 1991, and
 - (3) the construction will not result in the cutting, clearing, or grading of:
 - (A) any forest in a stream buffer, or
 - (B) any forest on property located in a special protection area which must submit a water quality plan.

A preliminary plan of subdivision or site plan approved before July 1, 1991, that is revised after that date at the initiative of the applicant and which results in the cutting of more than 5,000 additional square feet of forest is not exempt. Development or redevelopment of a property which requires resubdivision is not exempt. This subsection does not apply to a planned unit development subject to subsection (1);

- (l) any planned unit development for which a development plan was approved by the District Council or for which a project plan was approved by the Planning Board before January 1, 1992, and which has received site plan approval before July 1, 1992 for the tract. However, even if site plan approval has not been obtained before July 1, 1992, for the tract, the planned unit development is exempt if it is 75% or more complete on January 1, 1992, as measured by the total acreage subject to the planned unit development that has received site plan approval. A development plan or project plan amendment approved after January 1, 1992, is not exempt if it results in the cutting of more than 5,000 additional square feet of forest;
- (m) a real estate transfer to provide a security, leasehold, or other legal or equitable interest in a portion of a lot or parcel, if;

- (1) the transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and
- (2) both the grantor and grantee file a declaration of intent;
- (n) any minor subdivision under Section 50-35A(a)(2)-(3) involving conversion of an existing recorded outlot created because of inadequate or unavailable sewerage or water service to a lot or joining two or more existing residential lots into one lot, if:
 - (1) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); and
 - (2) development does not result in the cutting, clearing, or grading of:
 - (A) more than a total of 40,000 square feet of forest,
 - (B) any forest in a stream buffer,
 - (C) any forest on property located in a special protection area which must submit a water quality plan,
 - (D) any specimen or champion tree, or
 - (E) any tree or forest that is subject to the requirements of a previously approved forest conservation plan or tree save plan;
- (o) The cutting or clearing of public utility rights-of-way or land for electric generating stations licensed under Section 54A and 54B or Section 54I of Article 78 of the Maryland Code, if:
 - (1) any required certificates of public convenience and necessity have been issued in accordance with Section 5-1604(f) of the Natural Resources Article of the Maryland Code; and
 - (2) the cutting or clearing of the forest is conducted so as to minimize the loss of forest.
- (p) the construction of a public utility or highway in a utility right-of-way not exempt under subsection (o), or a highway right-of-way not exempt under subsection (e), if:
 - (1) the right-of-way existed before July 1, 1992;
 - (2) forest clearing will not exceed a total of 40,000 square feet and

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- (3) the construction will not result in the cutting, clearing, or grading of:
 - (A) any forest in a stream buffer,
 - (B) any forest on property located in a special protection area which must submit a water quality plan,
 - (C) any specimen or champion tree, or
 - (D) any tree or forest that is subject to a previously approved forest conservation or tree save plan;
- (q) a special exception application if:
 - (1) the application is for an existing structure and the proposed use will not result in clearing of existing forest or trees;
 - (2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the clearing of more than a total of 5000 additional square feet of forest or any specimen or champion tree; or
 - (3) the total disturbance area for the proposed special exception use will not exceed 10,000 square feet, and clearing will not exceed a total of 5000 square feet of forest or include any specimen or champion tree;
- (r) an equestrian facility located in an agricultural zone that is exempt from platting requirements under Section 50-9, whether or not a sediment control permit is obtained under Section 19-2. Article II does not apply to any equestrian support building or related activity only if the building is built using best management practices. However, Section 22A-6(b) applies if any specimen or champion tree would be cleared. This exemption does not permit any forest or tree that was preserved under a previously-approved forest conservation plan or tree save plan to be cut, cleared, or graded unless the previously-approved plan is amended to allow that activity. This exemption does not apply if:
 - (1) any forest was cleared during an agricultural activity, as defined in subsection (b), during the 5 years before any exemption under this subsection is claimed;
 - (2) any forest or tree located in a stream valley buffer would be cleared;
 - (3) on-site forest retention does not equal at least 25% of the tract area or all forest existing when the exemption is claimed, whichever is less; or

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- (4) on-site forest retention does not equal at least 50% of any net tract area when more than 50% of that tract is existing forest.

A conservation easement is not required for any equestrian facility, whether or not the exemption in this subsection applies. However, another type of long-term protection may be required under Section 22A-12(h)(2) if the facility includes any forest retention area. The Planning Director must monitor any facility that is exempt under this subsection to confirm that the applicant and any successor in interest continue to comply with all conditions of the exemption;

- (s) (1) an activity occurring on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet; or
- (2) an activity occurring on a tract less than 1 acre that will not result in the clearing of more than a total of 30,000 square feet of existing forest, or any existing specimen or champion tree, and reforestation requirements would not exceed 10,000 square feet. Forest in any priority area on-site must be preserved; and
- (t) a modification to existing developed property if:
- (1) no more than 5000 square feet of forest will be cleared;
- (2) the modification does not affect any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan; and
- (3) the modification does not require approval of a new subdivision plan. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 19, § 1; 2002 L.M.C., ch. 16, § 2; 2004 L.M.C., ch. 20, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-6. Exemptions—Special provisions.

- (a) Special transition provision. An activity or development that is exempted under Section 22A-5, but which requires site plan approval, is subject to the local law applicable to tree conservation in effect before July 1, 1992. However, a violation of the requirements of

any tree save plan or similar condition of approval may be enforced using any remedy provided under this Chapter.

- (b) Tree save plan provision. An activity or development that would be exempt under Section 22A-5, except that the proposed activity involves clearing of a specimen or champion tree, requires the approval of a tree save plan, which may require tree preservation or mitigation for loss of individual trees. The plan requirements must be based on the size and character of the trees to be cleared. If trees to be cleared are part of an existing scenic buffer between public parkland and a proposed development, trees which are smaller than specimen size may be included in the plan. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-7. Activities or development not exempt under Section 22A-5 — Special transition provision.

- (a) An activity or development not exempted under Section 22A-5 and which received preliminary plan of subdivision approval, site plan approval, project plan approval, or development plan approval, including any amendments, between July 1, 1991 and July 1, 1992 is exempt from the requirements of Article II at the time of a subsequent sediment control permit application if:
 - (1) final plat approval has been obtained by July 1, 1992; or
 - (2) a substantively complete application for final plat approval under Section 50-36 has been filed by July 1, 1992. If all other requirements are met, the Planning Board must consider an application to be substantively complete if the Board determines that:
 - (A) any required approval or permit that has not been obtained from another governmental agency is not available solely because of the inaction by the other governmental agency; and
 - (B) the applicant has used best efforts to obtain the permit or approval.
- (b) If final plat approval will not be required under subsection (a) of this Section because the development is on a recorded lot or for other reasons, the development will be subject to the requirements of this Chapter at the time of any subsequent application for a sediment control permit.
- (c) If the Planning Board finds that a development approval between July 1, 1991 and July 1, 1992 was consistent with the retention, afforestation, or reforestation standards of this Chapter but is not exempt under this Section, the Board may waive additional submission requirements at the time of any later sediment control permit application. However, the Board must not waive the provisions of Section 22A-12(g) and (h) requiring certain agreements and financial security.
- (d) An amendment to a sediment control permit approved between July 1, 1991 and July 1, 1992 is subject to the requirements of Article II if the activity is not otherwise exempt and it will result in the cutting of an additional 5,000 square feet of forest. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-8. Utility lines.

(a) *General.*

- (1) Except as provided in paragraph (2) of this subsection, this Section applies to a proposed land disturbing activity requiring a sediment control permit for the construction, reconstruction, or replacement of public utility lines (except water and sewer lines) within a public right-of-way, public utility easement, or a public utility right-of-way owned by the utility.
- (2) This Section does not apply if a public utility easement will be located on the property of a development subject to Article II of this Chapter. Satisfaction of the regulatory requirements of that Article applicable to activities on the easement is the responsibility of the owner of the property.

(b) *Calculation Rules; Exemption.*

- (1) To determine the applicability of this Chapter under Section 22A-4 to proposed activities within a public right-of-way or public utility easement, the calculation of land area must be based on the limits of disturbance as shown on the sediment control permit.
- (2) A public right-of-way, public utility easement, or privately owned utility right-of-way is considered to be exempt under Section 22A-5(o) if the proposed activity and any future stages of the work on the utility line will not result in the cumulative cutting, clearing, or grading of more than 40,000 square feet of forest or the cutting, clearing, or grading of any specimen or champion tree, or trees or forest that are subject to a previously approved forest conservation or tree save plan. Any later stages of the work must be identified at the time of the initial sediment control permit application.
- (3) If the exemption does not apply, afforestation or reforestation requirements must be calculated using the net tract area applicable to the entire proposed utility line without regard to project segments subject to a specific sediment control permit. The property boundaries of the privately owned utility right-of-way, public utility easement, or public right-of-way (to the extent of the utility work) must be used in calculating the area of the tract. The net tract area should reflect any reduction in land area that will continue to be used for agricultural activities.

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Any requirement for mitigation for loss of any specimen or champion tree must be based on the size and character of the tree. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-9. County Highway Projects.

- (a) *General.*
 - (1) This section applies to construction of a highway by the County as part of an approved Capital Improvements Program project.
 - (2) The construction should minimize forest cutting or clearing and loss of specimen or champion trees to the extent possible while balancing other design, construction, and environmental standards. The constructing agency must make a reasonable effort to minimize the cutting or clearing of trees and other woody plants.
- (b) If the forest to be cut or cleared for a County highway project equals or exceeds 40,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of reforestation for each acre of forest cleared.
- (c) Reforestation for County highway projects must meet the standards in subsections 22A-12(e), (g) and (h).
- (d) Any mitigation requirement for loss of specimen or champion trees must be based on the size and character of the tree. (2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

ARTICLE II. FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS.

Sec. 22A-10. General.

- (a) *Approval required.* A person who is subject to this Article must submit a forest stand delineation and forest conservation plan for regulatory approval.
- (b) *Forest stand delineation.*
 - (1) A forest stand delineation must be used during the preliminary review process to find the most suitable and practical areas for tree and forest conservation. A forest stand delineation must contain topographic, hydrographic, soils and geologic, and qualitative and quantitative information on trees and forest cover, and other information or requirements specified in the regulations or technical manual.
 - (2) A simplified forest stand delineation may replace the forest stand delineation required by paragraph (1) if:
 - (A) there is no forest on the site;
 - (B) no forest on the site would be cut, cleared, or graded for the proposed use, and all forest on the site would be subject to a long-term protective agreement; or
 - (C) the on-site forest is located on a portion of the tract which is exempt from this Article, such as areas remaining in agricultural use as part of a subdivision.
 - (3) The Planning Director may waive any requirement for information that is unnecessary for a specific site.
 - (4) An approved forest stand delineation is not valid after 2 years unless:
 - (A) a forest conservation plan has been accepted as complete; or
 - (B) the delineation has been recertified by the preparer.
- (c) *Forest conservation plan.*
 - (1) A forest conservation plan is intended to govern conservation, maintenance, and any afforestation or reforestation requirements which apply to the site. A forest conservation plan must contain information on the extent and characteristics of

the trees and forested area to be retained or planted, proposed locations for on-site and off-site reforestation, scheduling, protective measures, a binding maintenance agreement effective for at least 2 years, a binding agreement to protect forest conservation areas, and other information or requirements specified in the regulations or technical manual.

- (2) A forest conservation plan may include protective measures designed to conserve significant and mature trees on adjacent property from adverse impacts that may be caused by the development or land disturbing activities proposed for the tract.
- (3) A forest conservation plan may be reviewed in 2 stages with the submission of a preliminary and a final forest conservation plan as specified under Section 22A-11.
- (d) *Qualifications of preparer.* The forest stand delineation and forest conservation plan must be prepared by a licensed forester, licensed landscape architect or other qualified professional approved by the Planning Director. In determining if a person is qualified, the person must meet all applicable requirements under the Code of Maryland Regulations, 08.19.06.01. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-11. Application, review, and approval procedures.

- (a) *General.*
 - (1) Coordinated with project review. The forest stand delineation and forest conservation plan must be submitted and reviewed in conjunction with the review process for a development plan, project plan, preliminary plan of subdivision, site plan, special exception, mandatory referral, or sediment control permit in accordance with this Section. The Planning Director must coordinate review of the forest conservation plan with the Director of Environmental Protection, the Director of Permitting Services, the Washington Suburban Sanitary Commission, other relevant regulatory agencies, and entities that will provide public utilities to the tract, to promote consistency between the objectives of this Chapter and other development requirements. To the extent

practicable, entities providing public utilities should design facilities that will serve a tract in a manner that avoids identified conservation areas and minimizes tree loss.

- (2) Modification to an approved plan. The Planning Director may approve modifications to an approved forest conservation plan that are consistent with this Chapter if:
 - (A) field inspections or other evaluation reveals minor inadequacies of the plan; or
 - (B) each modification is minor and does not impact any forest in a priority area (such as substituting an on-site conservation area for an equal or greater on-site area of similar character, or substituting a marginal on-site conservation area for equal or greater amount of off-site priority area); or
 - (C) action is otherwise required in an emergency situation.

Any other modification must be approved by the agency that approved the forest conservation plan.

- (b) *Project requiring development plan, project plan, preliminary plan of subdivision, or site plan approval.*
 - (1) Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation with the application for a development plan, project plan, preliminary plan of subdivision, or site plan, whichever comes first. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances.
 - (2) Forest conservation plan.
 - (A) Application. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning Director. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest

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conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, an applicant, with the approval of the Planning Board, may submit a preliminary forest conservation plan at the time of the development approval and a final forest conservation plan before issuance of a sediment control permit for the tract.

- (B) Review. Within 45 days from receipt of a final forest conservation plan, including a plan that is not reviewed in 2 stages, the Planning Director must notify the applicant whether the forest conservation plan is complete and approved for submission to the Planning Board as part of the development application. If the applicant is not notified within 45 days, the plan will be treated as complete and approved for submission. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the Director may extend this deadline for extenuating circumstances.
- (C) Condition of approval. The forest conservation plan will be reviewed by the Planning Board concurrently with the development plan, project plan, preliminary plan of subdivision or site plan, as appropriate. The forest conservation plan, as may be amended by the Board, must be made a condition of any approval of the development application. For a development plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-D-1.4.

(c) *Project requiring special exception approval.*

- (1) Forest stand delineation. If a special exception proposal is subject to the requirements of this Chapter, the applicant must submit a forest stand delineation to the Planning Director before the Board of Appeals may consider the application for the special exception. The deadlines for reviewing a forest stand delineation are the same as in paragraph (b)(1) of this Section.
- (2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a preliminary forest conservation plan to the Planning Director. The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception application and must not approve a special exception application that is in conflict with the preliminary forest conservation plan. A final forest conservation plan must be submitted before obtaining a sediment control permit, or at the time of preliminary plan of subdivision or site plan application, if

required. The deadlines for reviewing a final forest conservation plan are the same as in paragraph (d)(2) of this Section.

(d) *Project requiring a sediment control permit only.*

- (1) Forest stand delineation. If an application for a sediment control permit may be subject to the requirements of this Chapter, the applicable sediment control permit issuing authority must direct the applicant to the Planning Director for a determination. If the Planning Director finds the sediment control permit application to be subject to this Chapter, the applicant must submit a forest stand delineation to the Planning Director for review. The deadlines for reviewing a forest stand delineation are the same as in paragraph (b)(1) of this Section.
- (2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a forest conservation plan. Within 45 days from receipt of the forest conservation plan, the Planning Director must notify the applicant if the forest conservation plan is complete and approved. If the applicant is not notified within 45 days, the plan will be treated as complete and approved. The Director may require further information or provide for an extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the Director may extend this deadline for extenuating circumstances.
- (3) Issuance of sediment control permit. A sediment control permit must not be issued to a person who must comply with this Article until:
 - (A) a final forest conservation plan, if required, is approved; and
 - (B) any financial security instrument required under this Chapter is provided.

(e) *Project requiring mandatory referral.*

- (1) Forest stand delineation. A person seeking mandatory referral for a project that is subject to the requirements of this Chapter must first submit a forest stand delineation to the Planning Director for review. The deadlines for reviewing a forest stand delineation are the same as in paragraph (b)(1) of this Section.
- (2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a preliminary forest conservation plan. The Planning Board must consider the preliminary forest conservation plan when reviewing the mandatory referral application. The deadlines for reviewing the final forest conservation plan are the same as in paragraph (d)(2) of this Section.

- (3) Issuance of a sediment control permit. Issuance of a sediment control permit is subject to the conditions specified in paragraph (d)(3) of this Section. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 19, § 1; 2002 L.M.C., ch. 16, § 2.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-12. Retention, afforestation, and reforestation requirements.

- (a) *Table.*

<u><i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i></u>		
<u><i>Land Use Category¹</i></u>	<u><i>Forest Conservation Threshold</i></u>	<u><i>Required Afforestation</i></u>
Agricultural and resource areas	50%	20%
Medium-density residential areas	25%	20%
Institutional development areas	20%	15%
High-density residential areas	20%	15%
Mixed-use development areas	15-20% ²	15%
Planned unit development areas	15-20% ²	15%
Commercial and industrial use areas	15%	15%

¹ A religious institution must comply with the requirements that apply to the base zone in which it is located.

² The residential and institutional portions of the tract must meet the 20% requirement. If a planned unit development was initially approved before January 1, 1992, and is between 25% and 75% complete on July 1, 1992, (as measured by the total acreage subject to the planned unit development that has received site plan approval), the forest conservation threshold is calculated at 15 per cent. If the planned unit development is less than 25% complete, the forest conservation threshold is calculated using the adjustment shown in the chart.

(b) *Retention.*

(1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:

- (A) the development would make maximum use of any available planning and zoning options that would result in the greatest possible forest retention;
- (B) reasonable efforts have been made to protect the specific areas and vegetation listed in the plan; and
- (C) the development proposal cannot be reasonably altered.

(2) In general, areas protected under this subsection include:

- (A) floodplains, stream buffers, steep slopes, and critical habitats;
- (B) contiguous forests;
- (C) rare, threatened, and endangered species;
- (D) trees connected to an historic site;
- (E) champion trees and other exceptionally large trees; and
- (F) areas designated as priority save areas in a master plan or functional plan.

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

(1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed.

- (2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 1/4 acre planted for every one acre removed.
 - (3) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.
 - (4) A regulated activity under this Chapter within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.
- (d) *Afforestation.*
- (1) A site with less than 20 percent of the net tract area in forest cover must be afforested in accordance with the required afforestation percentages shown on the table in subsection (a) of this Section.
 - (2) Afforestation should be accomplished by the planting of forest cover. However, if the applicant demonstrates to the satisfaction of the Planning Board or Planning Director, as the case may be, that afforestation using forest cover is inappropriate for a site because of its location in an urban setting, redevelopment context, high-density residential, commercial, industrial, planned unit development, or institutional area (as defined in Section 22A-3), or similar reason, afforestation requirements may be satisfied by tree cover.
- (e) *Standards for reforestation and afforestation.*
- (1) (A) Preferred sequence. Except as provided in the technical manual or otherwise in paragraph (1) of this subsection, the preferred sequence for afforestation and reforestation is, in general: enhancement of existing forest through on-site selective clearing, supplemental planting, or both; on-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible; landscaping with an approved plan; and off-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible.

- (B) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:
 - (i) to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts;
 - (ii) for public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or
 - (iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.
 - (C) Public Utility Considerations. The sequence provided in subparagraph (A) of this paragraph for public utility projects may be modified to reflect applicable electrical or other safety codes, or right-of-way constraints.
- (2) Off-site afforestation and reforestation. In addition to the use of other sites proposed by an applicant and approved by the County, off-site afforestation or reforestation may also include:
- (A) Forest mitigation banks designated in advance by the County.
 - (B) Protection of existing off-site forest. Acquisition of an off-site protective easement for existing forested areas not currently protected is an acceptable mitigation technique instead of off-site afforestation or reforestation planting, but the forest cover protected must be 2 times the afforestation and reforestation requirements.
 - (C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.
- (3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred. Unless the Planning Board or Planning Director order otherwise, the required use of natural regeneration under this Chapter supercedes any prohibition under Chapter 58.

- (4) Location requirements. Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located.
 - (5) Deadline for plant installation. The afforestation and reforestation requirements under this subsection must be accomplished within one year or 2 growing seasons after a development project is complete.
 - (6) Planned Unit Developments; Other Staged Development. Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan or project plan instead of the net tract area. Similarly, the Planning Board may allow any afforestation or reforestation requirement applicable to a staged development subject to a single preliminary plan of subdivision but with separate site plan reviews for each stage to be calculated and satisfied using the total area covered by the preliminary plan of subdivision.
- (f) *Special provisions for minimum retention, reforestation and afforestation.*
- (1) General. Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.
 - (2) Retention, reforestation and afforestation. Forest retention should be maximized where possible on each site listed in this subsection. At a minimum, on-site forest retention, and in some cases reforestation and afforestation, must be required as follows:
 - (A) In an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.
 - (B) In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a). This requirement also applies to any site seeking a waiver or variance from base zone standards under Section 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or 59-C-7.131, if as a condition of the waiver or variance the Planning Board or County

Council must find that the resulting development is environmentally more desirable.

- (C) On a site covered by this subsection, if existing forest is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold in subsection (a), the afforestation threshold is the minimum on-site forest requirement.
- (D) If a site covered by this subsection is unforested, on-site afforestation must equal the applicable afforestation threshold.
- (3) If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.
- (4) Retention, reforestation, and afforestation must adhere to the priorities and sequence established in subsections (b) and (e).
- (g) *In lieu fee.*
 - (1) General. If a person satisfactorily demonstrates that the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person must contribute money to the forest conservation fund at a rate specified by the County Council by law or resolution, but not less than the rate required under Section 5-1610 of the Natural Resources Article of the Maryland Code. The requirement to contribute money must be met within 90 days after development project completion.
 - (2) Specific development situations. Except as specified in subsection (f), the Planning Board or Planning Director may allow an applicant to pay into the County Forest Conservation Fund instead of providing afforestation, reforestation, or landscaping in the following situations:
 - (A) Afforestation using tree cover. If an applicant has shown that on-site afforestation using forest cover is not appropriate under subsection (d)(2), the applicant may pay the fee instead of using tree cover to meet any afforestation requirement.
 - (B) Afforestation or reforestation using landscaping. An applicant may pay the fee instead of using credit for landscaping.

- (C) Afforestation on sites with no priority planting areas. If a site has afforestation planting requirements and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available, the applicant may pay the fee instead of doing off-site afforestation.
 - (D) Reforestation on small properties with no priority planting areas. An applicant may pay the fee instead of on-site or off-site reforestation on properties less than 5 acres when the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.
 - (E) Sites with minor reforestation requirements. An applicant may pay the fee instead of on-site or off-site reforestation for any plan where overall reforestation requirements are less than ½ acre and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.
- (h) *Agreements.*
- (1) Maintenance agreement. A forest conservation plan must include a two-year binding agreement for maintenance of conservation areas, including the watering (as practical), feeding, and replanting of areas to be afforested or reforested. The 2-year period starts upon satisfactory final inspection of the conservation measures required under the forest conservation plan. A staged project may have more than one agreement.
 - (2) Long-term protective measures. A forest conservation plan must include appropriate measures for the protection of conservation areas; limitations on the use of these areas consistent with conservation and management practices; and legal instruments such as conservation easements, deed restrictions, covenants, and other agreements, as necessary.
- (i) *Financial Security.*
- (1) Security required. Except as provided in paragraph (8) of this subsection, an approved financial security instrument must be required to ensure:
 - (A) compliance with all requirements of an approved forest conservation plan including afforestation, reforestation, and maintenance; or

- (B) full payment of funds to be paid instead of afforestation or reforestation, if required under subsection (g).
- (2) Preferred form. The preferred financial security instruments are an irrevocable letter of credit or a cash bond. The letter of credit must expressly state that the total sum is guaranteed to be available and payable on demand directly to the Maryland-National Capital Park and Planning Commission in the event of forfeiture. A certificate of guarantee or a surety bond may also be used, including a bond payable to the Commission and County that additionally guarantees completion of public improvements associated with the proposed development. The financial security instrument must be made payable to the Commission and must be of a form and content satisfactory to the Commission and its legal counsel.
- (3) When required. The financial security instrument must be provided prior to any land disturbing activity, as defined in Chapter 19, occurring on a section of the tract subject to the forest conservation plan.
- (4) Amount required.
 - (A) If the financial security is required under subparagraph (1)(A) of this subsection, the security instrument must be in an amount equal to the estimated cost of afforestation, reforestation, and maintenance applicable to the section of the tract subject to the land disturbing activity. The instrument must include a provision for adjusting the amount based on actual costs. The Planning Director must notify the obligee of any proposed adjustment and provide the opportunity for an informal conference.
 - (B) If the financial security is required under subparagraph (1)(B) of this subsection, the security instrument must be in an amount equal to the in lieu payment.
- (5) Release. The financial security instrument must be in effect until all requirements have been fulfilled to the satisfaction of the Planning Director. The instrument may provide for the partial release or return of the instrument based on successful implementation of phases of the forest conservation plan.
- (6) Events of forfeiture. The financial security instrument may be subject to forfeiture on:

- (A) failure of the obligee to perform the work under the forest conservation plan in accordance with the required schedule; or
 - (B) failure of the obligee to pay a required in lieu fee in a timely manner.
- (7) Forfeiture proceedings.
- (A) The Planning Director must notify the obligee, by certified mail, of the intention of the Commission to initiate forfeiture proceedings.
 - (B) The obligee has 30 days from the receipt of the notice of forfeiture to show cause why the financial security should not be forfeited.
 - (C) If the obligee fails to show cause, the financial security instrument must be forfeited.
- (8) Exception. This subsection does not apply to governmental entities. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1; 2006 L.M.C., ch. 35, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-13. Forest mitigation banks.

- (a) A person may create a forest mitigation bank from which applicants may buy credits by afforesting or reforesting an area of land under a forest mitigation bank plan approved by the Planning Director.
- (b) The area of land where the bank is planted must be at least 1 acre.
- (c) A forest mitigation bank must use native plants for afforestation and reforestation, unless inappropriate.
- (d) A person proposing to create a forest mitigation bank must submit a plan to the Planning Director, which must include:
 - (1) a 2-year maintenance agreement which meets the standards in subsection 22A-12(h)(1);

- (2) all information required by subsection 22A-10(c) for a forest conservation plan; and
 - (3) the draft easement, covenants, or deed restrictions for the area to be sold to the developer when credits are withdrawn from the bank.
- (e) Forest mitigation banks must be established in priority areas described in subsection 22A-12(e)(3), or in areas identified in a master plan or functional plan.
- (f) Credits must not be debited from a forest mitigation bank until all trees have been planted and accepted by the Planning Director, and either financial security which meets the standards in subsection 22A-12(i) has been provided or the Planning Director has found that a sufficient number of trees have successfully survived for 2 years after planting.
- (g) To debit credits from an approved forest mitigation bank, the easement, covenants, or deed restrictions which assure that the newly reforested or afforested area of land remains a forest in perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show that credits are available and the applicant has the right to debit them. The credits must buy an amount of land equal to the applicant's off-site reforestation or afforestation requirements under its approved forest conservation plan. (2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

22A-14. Reserved.

ARTICLE III. ENFORCEMENT, APPEALS, AND VARIANCES.

Sec. 22A-15. Inspections and notification.

- (a) *Permission to gain access.* Authorized representatives of the Planning Department may enter properties subject to this Chapter for the purpose of inspection and enforcement.
- (b) *Plan to be on site; field markings.* A copy of the approved forest conservation plan must be available on the site for inspection by authorized representatives. Field markings must exist on site during installation of all protective devices, construction, or other land disturbing activities.

- (c) *Required inspections.* The Planning Department should conduct at least 3 field inspections of a tract subject to an approved forest conservation plan. The inspections should take place as follows:
- (1) The first inspection should take place before any land disturbing activities (including clearing, grading, or stripping) occurs on the tract to determine if protective measures have been properly installed and conservation areas clearly marked;
 - (2) The second inspection should take place following completion of all land disturbing activities and afforestation or reforestation to determine the level of compliance with the forest conservation plan; and
 - (3) The third inspection should take place at the end of the maintenance agreement 2-year time period.
- (d) *Other inspections.* The Planning Department may conduct other inspections or meetings as necessary to administer this Chapter, including an inspection to confirm a forest stand delineation.
- (e) *Required notifications.*
- (1) At least 2 working days before starting any land disturbing activities associated with the forest conservation plan, a person must notify the Planning Department. The Planning Department must coordinate its inspections, and any pre-construction conferences, with the Department of Permitting Services to avoid inconsistent directives in the field relating to the forest conservation plan and sediment control activities.
 - (2) At least 2 working days before completion of afforestation and reforestation plantings, a person must notify the Planning Department so that the Department may schedule the second inspection specified under paragraph (c)(2) of this Section. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2002 L.M.C., ch. 16, § 2.)

Sec. 22A-16. Penalties and other remedies.

- (a) *Class A violation.* Violation of this Chapter or any regulations adopted under it is a Class A civil or criminal violation. Notwithstanding Section 1-19, the maximum civil fine is \$1,000. Each day a violation continues is a separate violation under this Chapter.
- (b) *Enforcement authority.* The Maryland-National Capital Park and Planning Commission has primary enforcement authority under this Chapter. Administrative enforcement actions are to be initiated by the Planning Director in accordance with this Article.

- (c) *Civil and criminal actions.* The Commission may bring any civil or criminal action that the County may bring under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it. The Commission may also bring a civil action to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order. These remedies are in addition to any remedy that the Commission or County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan.
- (d) *Administrative civil penalty.*
- (1) In addition to other remedies provided under this Article, a person who violates this Chapter, any regulations adopted under it, a forest conservation plan, or any associated agreements or restrictions is liable for an administrative civil penalty imposed by the Planning Board. This civil penalty must not exceed the rate set by the County Council by law or resolution, except as provided in paragraph (3), but must not be less than the amount specified in Section 5-1608(c) of the Natural Resources Article of the Maryland Code. Each day a violation is not corrected is a separate violation.
- (2) In determining the amount of the civil penalty, or the extent of an administrative order issued by the Planning Director under Section 22A-17, the Planning Board or Planning Director must consider:
- (A) the willfulness of the violations;
 - (B) the damage or injury to tree resources;
 - (C) the cost of corrective action or restoration;
 - (D) any adverse impact on water quality;
 - (E) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator;
 - (F) any economic benefit that accrued to the violator or any other person as a result of the violation;
 - (G) the violator's ability to pay; and
 - (H) any other relevant factors.

The Board or Director may treat any forest clearing in a stream buffer, wetland, or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.

- (3) In addition to any amount set under paragraph (1), an administrative civil penalty imposed under this Section may also include an amount that equals the fair market value of any conservation easement needed to enforce any mitigation or restoration requirement under this Chapter in the area of the violation. The Planning Board may specify the acceptable methods of calculating the fair market value of a conservation easement by a regulation adopted under Section 22A-26(a).
- (4) The reasons for imposing a civil penalty must be provided in a written opinion of the Planning Board and included in its administrative order.
- (e) *Fund.* Money collected under this Section must be deposited into the forest conservation fund. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1, 2005 L.M.C. ch. 32, § 1.; 2006 L.M.C., ch. 33, § 1)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-17. Corrective actions.

- (a) *Administrative order.* At any time, including during an enforcement action, the Planning Director may issue an administrative order requiring the violator to take one or more of the following actions within a certain time period:
 - (1) stop the violation;
 - (2) stabilize the site to comply with a reforestation plan;
 - (3) stop all work at the site;
 - (4) restore or reforest unlawfully cleared areas;
 - (5) submit a forest conservation plan for the property;
 - (6) place forested or reforested land under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or
 - (7) submit a written report or plan concerning the violation.

- (b) *Effectiveness of order.* An order issued under this Section is effective according to its terms, when it is served. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-18. Plan suspension and revocation.

Grounds for action. After notice to the violator and opportunity for a hearing has been provided under Section 22A-20(d), the Planning Board may suspend or revoke a forest conservation plan if it determines that any of the following has occurred:

- (a) failure of a violator to post or maintain the financial security instrument required under Subsection 22A-12;
- (b) failure to comply with the requirements of an administrative action or order issued under this Chapter;
- (c) misrepresentation in the application process or failure to disclose a relevant or material fact; or
- (d) violation of a requirement of a forest conservation plan or associated legal instrument. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-19. Noncompliance with exemption conditions.

- (a) *Determination of noncompliance.* A person who receives an exemption subject to a declaration of intent or for commercial logging and timber harvesting operations is in noncompliance if:
 - (1) within 5 years, an application for a development or other approval regulated by this Chapter is submitted for the tract or lot covered by the exemption; or
 - (2) the person otherwise violates this Chapter or the declaration of intent.
- (b) *Penalties for noncompliance.* In addition to any other remedies under this Chapter, the Planning Board may require a person in noncompliance to:

- (1) meet the forest conservation threshold as would have been required;
- (2) pay an administrative civil penalty under Section 22A-16(d) for the area of forest cut or cleared under the exemption; or
- (3) both. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-20. Notice, hearings, and appeals.

- (a) *General.* Except as provided under subsections (c) and (d) of this Section, the requirements for notice, public hearing, and administrative decision-making for the associated development approval must be followed when reviewing a forest stand delineation or forest conservation plan.
 - (b) *Forest conservation plans and variances approved by the Planning Board or District Council.*
 - (1) A person aggrieved by the decision of the Planning Board on the approval, denial, or modification of a forest conservation plan (including a request for a variance) may file a judicial appeal of the final administrative action on the development approval in accordance with Subtitle B of the Maryland Rules of Procedure* and any other law applicable to the proceeding.
 - (2) A person aggrieved by the decision of the District Council on the approval, denial, or modification of a forest conservation plan (including a request for a variance) proposed in conjunction with a development plan may file a judicial appeal of the action on the development plan in accordance with Division 59-H-8.
- *Editor's note—In 1993, former Chapter 1100, subtitle B, of the Maryland Rules (often referred to as the "B Rules"), became Title 7, Chapter 200, of the Maryland Rules.
- (c) *Forest stand delineations and forest conservation plans approved by the Planning Director.*
 - (1) Appeal to Planning Board. Upon receipt of the Planning Director's written decision on a forest stand delineation or forest conservation plan, an applicant has 30 days in which to appeal to the Planning Board.
 - (2) Hearing; decision. The Planning Board must hold a hearing on the appeal and inform the applicant in writing of its decision. The Board must consider the appeal de novo. For purposes of judicial review, the decision of the Planning Board constitutes final agency action.

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- (3) Appeal. Upon receipt of the Planning Board's decision, an applicant has 30 days in which to appeal the decision in accordance with Subtitle B of the Maryland Rules of Procedure.*

*Editor's note—In 1993, former Chapter 1100, subtitle B, of the Maryland Rules (often referred to as the "B Rules"), became Title 7, Chapter 200, of the Maryland Rules.

(d) *Administrative enforcement actions.*

- (1) Notice. A complaint, order, or other administrative notice issued by the Planning Director under this Article must be served on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address. The notice must identify the alleged violator, the location of the violation, and the specific facts of the violation, and must give the alleged violator the opportunity for a hearing before the Planning Board within 10 working days of receipt of the notice. If an administrative action under this Article can only be taken by the Board, the notice must state the date on which the action is scheduled to be considered by the Board.
- (2) Hearing. If an opportunity for a hearing is requested, the matter must be expeditiously scheduled on a Planning Board agenda unless the alleged violator consents to a delay. The filing of a request for a hearing does not stay an administrative order to stop work, stabilize a site, or stop a violation.
- (3) Decision. The Planning Board must inform the alleged violator in writing of its decision on an administrative enforcement action. The Board's decision constitutes final agency action for purposes of judicial review.
- (4) Appeal. Upon receipt of the Planning Board's decision, an aggrieved person has 30 days in which to appeal the Board's action in accordance with Subtitle B of the Maryland Rules of Procedure.* (1992 L.M.C., ch. 4, § 1)

*Editor's note—In 1993, former Chapter 1100, subtitle B, of the Maryland Rules (often referred to as the "B Rules"), became Title 7, Chapter 200, of the Maryland Rules.

Sec. 22A-21. Variance provisions.

- (a) *Written request.* A person may request in writing a variance from this Chapter or any regulation adopted under it if the person demonstrates that enforcement would result in unwarranted hardship to the person. A request for a variance waives the time requirements in Section 22A-11.

- (b) *Application requirements.* An applicant for a variance must:
- (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - (2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
 - (3) verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
 - (4) provide any other information appropriate to support the request.
- (c) *Referral to other agencies.* Before considering a variance, the Planning Board must refer a copy of each request to the County Arborist, Planning Department, and other appropriate officials or agencies for a written recommendation before acting on the request. Recommendations must be submitted to the Planning Board within 30 days from the receipt by the official or agency of the request or the recommendation should be presumed to be favorable.
- (d) *Minimum criteria.* A variance must not be granted if granting the request:
- (1) will confer on the applicant a special privilege that would be denied to other applicants;
 - (2) is based on conditions or circumstances which are the result of the actions by the applicant;
 - (3) arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
 - (4) will violate State water quality standards or cause measurable degradation in water quality.
- (e) *Approval procedures; Conditions.* The Planning Board, or the District Council on a development plan, must make findings that the applicant has met all requirements of this Section before granting a variance. Appropriate conditions may be imposed to promote the objectives of this Chapter and protect the public interest.

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- (f) *Notice to State Department of Natural Resources; Right to initiate or intervene in proceedings.*
- (1) Notice of a pending variance request must be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.
 - (2) The Department of Natural Resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance. (1992 L.M.C., ch. 4, § 1.)

Secs. 22A-22–22A-25. Reserved.

ARTICLE IV. ADMINISTRATION.

Sec. 22A-26. Regulations.

- (a) *Adoption.* The Planning Board must adopt regulations, including necessary procedures, to administer this Chapter. In adopting the regulations, the Board must follow the adoption procedures for a Method (2) regulation under Section 2A-15 and any requirements applicable under State law. However, a proposed regulation of a procedural nature or that would implement changes in State law or regulation, may be adopted under Method (3) if it is consistent with this Chapter. The regulations must include procedures to amend a forest conservation plan and a declaration of intent.
- (b) *Technical manual.* The technical manual must include guidance and methodologies for:
 - (1) preparing and evaluating a forest stand delineation and natural resource inventory;
 - (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;
 - (3) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;
 - (4) monitoring and enforcement of forest conservation plans; and
 - (5) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

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- (c) *Development agreements; Conservation easements.* The Planning Board may in the regulations require developer agreements, conservation easements, land trusts, covenants, and deed restrictions as part of an approved forest conservation plan.
- (d) *Administrative fee.* The Planning Board must charge a fee to cover at least partially the costs of administering this Chapter, including review of submittals and field inspections. The fee schedule must be set by the Planning Board as part of the development application process. Different fees may be set based on the size of the tract or other relevant factors.
- (e) *Additional regulations.* Notwithstanding any other provision of this Chapter, the Planning Board may, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation and allow modified application submissions or procedures for development projects of a minor scale or public utility projects.
- (f) *Reports.* The Planning Board must make all reports on the County forest conservation program to the General Assembly and State Department of Natural Resources that are required under State law or regulation. The reports should be reviewed by the County Arborist for comment, and copies of all final reports must be transmitted to the County Council and County Executive.
- (g) *List of Off-Site Property for Mitigation.* The Planning Director should develop and maintain a list of properties that may be suitable for off-site mitigation required under forest conservation plans. The Planning Director should develop the list in coordination with the County Arborist, the Department of Environmental Protection, the Department of Public Works and Transportation, the Department of Economic Development, the Soil Conservation District, and other appropriate agencies.
- (h) *Sediment Control Permit Applications.* The Planning Director and the Director of the Department of Environmental Protection should develop administrative procedures to prevent, to the extent possible, circumvention of this Chapter by a person who obtains a sediment control permit for land disturbing activities on less than 40,000 sq. ft. of land and who later seeks preliminary plan of subdivision approval for the same land. These procedures may include requiring an applicant for a sediment control permit to submit a declaration of intent enforceable under Section 22A-19. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 19, § 1.)

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- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-27. Forest conservation fund.

There is a County forest conservation fund. Money deposited into the fund must be used in accordance with the adopted County budget and in accordance with the following:

- (a) **In lieu fees.** Money deposited in the forest conservation fund instead of planting must be spent on the reforestation and afforestation for which the money is deposited, including costs directly related to site identification, acquisition, design, and preparation, and must not revert to the general fund. The permanent preservation of priority forests, including identification and acquisition of a site, may be substituted for reforestation and afforestation at a rate of 2 acres of forest preservation for each acre of planting required. Funds remaining after all reforestation and afforestation requirements are satisfied may be spent on any other tree conservation activity, including street tree planting.
- (b) **Penalties.** Money collected for noncompliance with a forest conservation plan or the associated 2-year maintenance agreement must be deposited in a separate account in the forest conservation fund. Money deposited in this fund may be used to administer this Chapter. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

Transition. Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Secs. 22A-28, 22A-29. Reserved.

ARTICLE V. COUNTY ARBORIST.

Sec. 22A-30. County Arborist.

- (a) **Appointment.** The Director of the Department of Environmental Protection must appoint a person to serve as County Arborist. The County Arborist functions within the Department of Environmental Protection.
- (b) **Qualifications.** The County Arborist must have relevant experience and an advanced degree in horticulture, forestry, forest ecology, plant pathology, landscape architecture, or other related field, or an equivalent combination of education and experience. The County Arborist should be licensed as a tree expert under State law.

- (c) *Duties.* The County Arborist has the following functions related to resource management and protection of forest and trees in the County:
- (1) develop a comprehensive County conservation and management strategy, including programs designed to promote afforestation and reforestation in the County, and the survival of historic trees and any endangered tree species;
 - (2) advise the County Executive and County Council on the effectiveness of County programs for controlling tree pests and diseases;
 - (3) review and approve proposed commercial logging and timber harvesting operations under Article II;
 - (4) review variance requests and reports under Article II;
 - (5) provide liaison with citizens and businesses on forest and tree conservation issues and develop appropriate mechanisms for public input on conservation strategies; and
 - (6) any other duties required by law or assigned by the County Executive. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-31. Forest Conservation Advisory Committee.

- (a) *Definition.* In this section "Committee" means the Forest Conservation Advisory Committee.
- (b) *Established.* The County Executive must appoint, subject to confirmation by the County Council, a Forest Conservation Advisory Committee.
- (c) *Composition and terms of members.*
- (1) The Committee has 15 public members. The public members should include:
 - (A) landscape architects;
 - (B) arborists and urban foresters;
 - (C) horticulturists and representatives from the nursery industry;
 - (D) persons directly engaged in agriculture;
 - (E) persons directly involved in the building industry;

- (F) members of citizen groups;
 - (G) members of environmental and conservation organizations; and
 - (H) representatives of public utility companies.
- (2) The Executive must designate a staff member from each of the following departments to serve as an ex officio member:
- (A) Economic Development;
 - (B) Environmental Protection; and
 - (C) Public Works and Transportation.
- (3) The Executive must invite a representative from each of the following agencies to serve as an ex officio member:
- (A) the County Planning Board; and
 - (B) the Washington Suburban Sanitary Commission.
- (4) The term of each member is 3 years and expires on December 31. After an appointment to fill a vacancy before a term expires, the successor serves the rest of the unexpired term.
- (d) *Voting, officers, meetings, and compensation.*
- (1) All members of the Committee are voting members.
 - (2) Each January, the Executive may designate a chair and vice-chair from among the Committee's public members to serve a 1-year term. If the County Executive does not designate a chair or vice-chair by February 15, the Committee members must select a chair and vice-chair.
 - (3) The Committee meets at the call of the Chair. The Committee must meet as often as necessary to perform its duties, but not less than 9 times each year.
 - (4) A member must serve without compensation. However, a member may request reimbursement for mileage and dependent care costs at rates established by the County.

- (e) *Duties.* The Committee must:
- (1) advise the Executive, Council, Planning Board, and any other relevant agency, on forestry policy issues;
 - (2) propose to the Executive, Council, Planning Board, and any other relevant agency, proactive forestry policies, laws, and guidelines;
 - (3) recommend a comprehensive approach to urban forestry;
 - (4) advise on a tree inventory;
 - (5) review and comment on policies and programs related to forestry;
 - (6) promote and seek funding for a sustained forestry program;
 - (7) promote and foster a strong sense of community through urban forestry;
 - (8) communicate with other boards, agencies, and community residents about forestry issues; and
 - (9) promote volunteerism and act as a general information resource.
- (f) *Annual Report.* By October 1 each year, the Committee must submit to the Executive, Council, Planning Board, and any other relevant agency, an annual report on its functions, activities, accomplishments, and plans and objectives.
- (g) *Advocacy.* The Committee must not engage in any advocacy activity at the State or federal levels unless that activity is approved by the Office of Intergovernmental Relations.
- (h) *Staff.* The Chief Administrative Officer must provide appropriate staff to the Committee. (2006 L.M.C., ch. 30, § 1.)

Editor's note—2006 L.M.C., ch. 30, §2, states: Transition. The County Executive must stagger the terms of the members initially appointed under Section 22A-31(c)(1) so that approximately one-third of the terms of these members expire each year.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

TO: Amanda Mihill
FROM: Mark Pfefferle
DATE: March 13, 2008
RE: Questions from Councilmembers on Bill 37-07

The Planning Department has received a number of different communications about information that would be helpful for the upcoming T&E Committee Meeting on Bill 37-07.

First, we received a letter from Councilmember Floreen that requested information on the Forest Conservation Task Force that the Department convened in 2006. Attached, please find the final report of this Task Force and a matrix that provides detailed information on the actions taken to date to implement each of the Task Force recommendations.

One of the major factors in being able to implement the Task Force recommendations is having sufficient staff to do the work. In the past year, we have created the position of Forest Conservation Program Manager at a supervisory level and I am currently serving in that position. In addition, the County Council did approve a FY08 budget that included additional reviewers and inspectors for this program. We have successfully filled all of these new positions (although we are still interviewing to fill one old inspector position that was recently vacated) and have been training new staff and reorganizing the reviewers into geographic teams. Information about the geographic teams is attached.

Secondly, we received your email of February 27, 2008 that posed a series of questions. We have worked to respond to each question. Each question is reiterated below and the response is immediately below the question.

1. Has Park & Planning ever considered creating a separate Forest Conservation Law/Plan process for individual homeowners vs. multi-unit/family projects?

Neither M-NCPPC nor the Council has proposed creating a separate forest conservation law for individual homeowners vs. multi-unit projects. The law used in Montgomery County follows the requirements established by the State of Maryland and the "Model Forest Conservation Ordinance" prepared by the State Department of Natural Resource and affects all properties greater than 40,000 square feet in size.

However, we certainly recognize that there is difference between individual homeowner projects and multi-unit projects and they are treated differently. Individual homeowner projects on previously recorded lots frequently are exempt from filing a forest conservation plan – although they may need to do a tree save plan. Since these types of properties do not require a new preliminary plan of subdivision, there is frequently no need for a forest conservation plan – and

when one is required under the law, it can be approved without a Planning Board hearing. In this instance plans are approved by the Planning Director or designee. New multi-unit projects require a new preliminary plan of subdivision, which requires the Planning Board to formally approve the forest conservation plan as part of the subdivision process.

In terms of being exempt from filing a forest conservation plan, this provision is in section 22A-5(a) of the code and is specific to individual residential lots. If an applicant can meet the requirements identified in this section, the project can be exempt from submitting a forest conservation plan. Prior to 2001, homeowners had to meet all the requirements to qualify for the exemption from submitting a forest conservation plan. The 2001 forest conservation law amendments created a new provision 22A-6(b). This section provides that if the only reason an activity or development cannot qualify for an exemption from submitting a forest conservation plan is because the proposed activity involves the removal of a specimen tree, the activity could qualify for exemption from submitting a forest conservation plan but be subject to a tree save plan. The 2001 amendment created a separate process that is utilized by many individual homeowners.

2. What are the impact and delays currently imposed on a property owner or developer who violates provisions of the Forest Conservation Law and/or the Plan process?

The impact and delay depend on the nature of the violation. If there is a violation of the forest conservation law, there is most likely also a sediment control violation which the property owner must address with another agency. If a person begins land disturbing activities without submitting or receiving approval of the forest conservation plan or exemption from submitting a forest conservation plan, the property owner may be required to submit a plan to bring the site into compliance. The review periods are established in the forest conservation law. The forest conservation law provides M-NCPPC 30 days to review a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD). After the approval of the NRI/FSD, which provides the baseline conditions, the property owner must submit and receive approval of a forest conservation plan. The forest conservation law provides M-NCPPC 45 days to review a forest conservation plan if it is not associated with a subdivision plan. If the property is part of a future subdivision, approval of the forest conservation plan requires findings from all contributing agencies that the development plan is in accordance with other county requirements and the Planning Board approves the subdivision.

If the violation is not process or procedural in nature but is non compliance with an approved plan or the terms of a conservation easement, the delay will depend on compliance with a corrective action order or other penalties established under Article III of Chapter 22A. The Planning Board does have the ability to suspend or revoke a forest conservation plan under Chapter 22A-18.

3. Can Park & Planning provide an update on their development of an Environmental Checklist?

The checklist referred to is for the submission of natural resource inventories/forest stand delineations. The checklist is complete and is being tested by staff. Before it can be distributed,

the submission checklist on the NRI/FSD application must be modified. Once that change is made, the checklist will be added to the M-NCPPC forest conservation website. All of these actions are anticipated to be completed in the very near future.

4. How much total forest in the County has been protected to date? Please provide a breakdown as to the different methods for protection, e.g. the Forest Conservation Law, County Park and State Parks/Forest acquisition, etc. What is the timeline for the Green Infrastructure Plan and what definitions are planners using to identify additional acres of forest to be protected?

This is not a simple question to answer and a complete answer would require many additional hours of staff work. Staff has been working for over two years to create a GIS layer for conservation easements created through the Forest Conservation Law. We have dedicated one staff person almost full-time to this effort and have used multiple interns to assist in the project. We are nearing completion of this project and, when it is done, we will be able to provide more definitive numbers in a more efficient timeframe.

However, we have tried to answer the Councilmembers' question to the best of our current ability.

First, we have information on public ownership of forests in Montgomery County (please note that not all parkland is forested and so a simple calculation of parkland does not provide useful information.) This information is from the GIS forest layer. We do not have an easily available breakdown on how these forested lands were acquired.

MNCPPC:	24,893 acres
State of Maryland:	8,760 acres
Federal Government	3,233 acres
WSSC:	1,373 acres
City of Gaithersburg:	412 acres
City of Rockville:	401 acres
Revenue Authority:	202 acres
Washington Grove:	53 acres
Town of Poolesville:	22 acres
Town of Somerset:	12 acres
Takoma Park:	3 acres
Garrett Park:	3 acres

Secondly, we know that since FY99, the Planning Department has approved forest conservation plans that resulted in the retention of 4,518 acres of forest and the planting of 1,084 acres of new forests.

Finally, in terms of the Green Infrastructure Plan, the approved work program schedule has the plan submitted to the Council in September 2009. The staff recently briefed the Planning Board on this project and a copy of the staff report for that briefing is attached.

Please note that the Green Infrastructure Plan will not identify forest for protection, but rather, it will identify a conceptual Countywide network of natural areas to provide a target to shoot

for, broad Green Infrastructure goals for the County, and measures of success. Once the Green Infrastructure Plan is approved it will move into the implementation phase. Then forest gap closure, corridor widening, and protection priorities will be evaluated and needed implementation measures can be created, applied, and periodically evaluated.

5. What are the criteria used to grant waivers or exemptions? How would these work in a real world situation?

Exemptions from submitting a forest conservation plan are not waivers per se. The law lays out clear criteria for granting an exemption from submitting a forest conservation plan. Individual applications are reviewed to confirm that the proposed activity meets all the requirements for an exemption.

For example, with a single lot exemption the activity must be "conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:

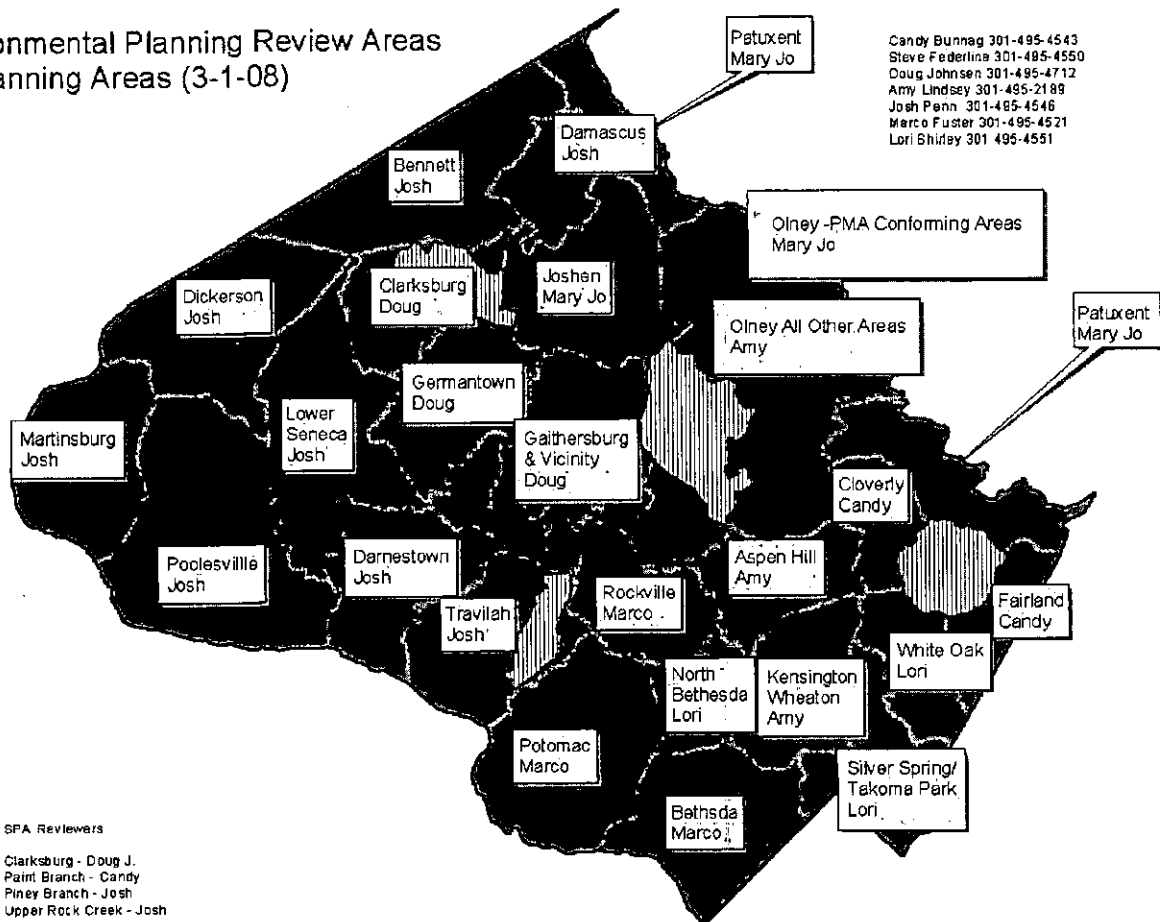
- 1. does not require a special exception;*
- 2. does not result in the cutting, clearing, or grading of:*
 - a. more than a total of 40,000 square feet of forest;*
 - b. any forest in a stream buffer,*
 - c. any forest on property located in a special protection area which must submit a water quality plan,*
 - d. any specimen or champion tree, or*
 - i. any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and*
 - ii. is subject to a declaration of intent filed with the Planning Director stating that the lot will not be the subject of additional regulated activities under this Chapter within 5 years of the cutting, clearing, or grading of forest."*

All of the requirements must be satisfied for this exemption. However as previously mentioned, the law was revised to state that a specimen tree could be removed and the property could still be exempt if the owner submits a tree save plan.

6. Under Marc's [Councilmember Elrich] amendments, if a complaint is successfully processed, your building permit could be denied for up to 5 years. Are there other jurisdictions with similar penalties (don't need an exhaustive search just if Royce happens to know)?

We are not aware of any jurisdictions that deny the issuance of building permits after a forest conservation violation is successfully processed. The State DNR Forest Conservation Program Manager confirmed that no local governments in Maryland restrict the issuance of building permits after a violation is rectified. This is proposal that the Planning Board is concerned about and does not support.

Environmental Planning Review Areas By Planning Areas (3-1-08)





MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 9
3/13/2008

MEMORANDUM

DATE: March 7, 2008

TO: Montgomery County Planning Board

VIA: Gwen Wright, Chief *[Signature]*
Countywide Planning Division
Jorge A. Valladares, P.E., Chief *[Signature]*
Environmental Planning
Mary Dolan, Master Planner/Supervisor *[Signature]*
Environmental Planning

FROM: Michael Zamore, Senior Planner, (301) 495-2106 *[Signature]*
Environmental Planning, Countywide Planning Division

SUBJECT: Briefing: Update on the Progress and Purpose of the Green
Infrastructure Functional Master Plan

RECOMMENDATION: Information and Discussion

Description/Scope of the Plan

This plan will identify and evaluate sensitive and important environmental features throughout Montgomery County and ways to connect them into a comprehensive system. The Plan will develop strategies and recommendations to make this vision a reality and will map interconnected natural areas of countywide significance. The Plan will also rank the relative importance of natural resources to help direct conservation, mitigation, restoration, and enhancement decisions. Priorities will be established to assist development review, master planning, park acquisition, and budgeting.

Benefits to the County:

- Establish environmental policy choices for the Planning Board and implement the environmental objectives and strategies of the 1993 General Plan Refinement
- Support the development pattern outlined in the General Plan and by Smart Growth initiatives
- Implement recommendations of the latest approved Land Preservation, Parks, and Recreation (LPPR) Plan

8787 Georgia Avenue, Silver Spring, Maryland 20910 Director's Office 301.495.4500 Fax 301.495.1310
www.MontgomeryPlanning.org

- Streamline the preparation of the Park, Recreation, and Open Space (PROS) Strategic Plan, and complement the Legacy Open Space (LOS) program
- Provide a broader understanding of the county's natural areas and how to achieve a functional green space network
- Streamline the review and mitigation process for public and private development projects to improve its environmental effectiveness

Relationship to Other Plans and Programs

The Green Infrastructure Functional Master Plan will provide an umbrella for area and sector master plans, as well as State and County environmental plans and programs. The plan helps achieve regional Air Quality Plan objectives and complements regional efforts to combat poor air quality. The Plan will complement the Water Resources Functional Master Plan by prioritizing natural area enhancement opportunities. This will help address specific water quality improvement needs identified in the Water Resources Plan. Increasing the function, quality and quantity of green infrastructure, reduces pollutant loading and enhances water quality. By helping to lower nutrient loads it will also help meet Chesapeake Bay commitments which in turn, improves our eligibility for State open space funds.

The State maintains and periodically updates the *Guidelines* for State and Local Land Preservation, Parks, and Recreation (LPPR) Planning. A key goal of the LPPR relates directly to the importance of comprehensive planning for green infrastructure. By including the development of a Countywide Green Infrastructure Plan in its recently approved LPPR Plan, M-NCPPC continues to be eligible for State funding for important natural resource conservation work. Finally, the Plan will complement the Legacy Open Space Program by identifying areas that should be priorities for acquisition, and its policies and recommendations will also guide revisions and amendments to local master plans and set important environmental policy choices for the Planning Board.

Progress to Date

Public Outreach

We have used interagency, public and private participation in the green infrastructure planning process. Three strong working groups composed of Environmental Planning, Park Planning and Stewardship, Research and Technology staff, and other experts, have provided invaluable input. Six Stakeholder Focus Groups were convened to cover a wide cross section of the community: Agriculture and Forestry, Building Industry and Chambers of Commerce, Environmental, Interagency and Public Land Managers, Municipalities and Large Civic Organizations, and Natural Areas Recreational Users. Some of the key ideas that we heard at the focus group meetings are:

- Green infrastructure criteria should be science-based
- Close gaps between greenways
- Developers want settled expectations
- Consider adjoining jurisdictions
- Consider significant isolated forest stands
- Create or enhance green infrastructure connections between watersheds

- Basic green infrastructure mapping criteria should be different in highly developed areas
- More green infrastructure will help enhance groundwater recharge
- Headwaters areas are critical for protection
- Look at opportunities to increase the size of natural areas.

The ideas from all six focus groups are summarized in Attachment I. We have also used video and print media to bring out the message.

Data Collection and Analysis

We identified relevant (GIS) data layers of the county's natural resources, analyzed their level of detail and accuracy, and merged appropriate information into one sensitive features layer. These layers included forests, hydric and erodible soils, stream quality, quality, wetlands, parks, and floodplains. Our scientific research and literature review have identified minimum green infrastructure criteria that we will use in developing the mapping scenarios.

We have prepared first cut mapping applying the green infrastructure mapping criteria to create various scenarios. We will show examples of mapping scenarios at the briefing. These scenarios will be further refined before the public forum where community and stakeholder comments will help us determine the optimal criteria. The scenarios are based on different assumptions about the corridor width, length of gaps between green areas and size of isolated forest areas:

	Minimum Width	Maximum Gap	Minimum Size
Alternative 1	200 feet	600 feet	50 acres
Alternative 2	200 feet	600 feet	50 acres
Outside Urban Ring			
Inside Urban Ring	0 feet	600 feet	1 acre interior forest
Alternative 3	200 feet	600 feet	50 acres
Outside Urban Ring			
Inside Urban Ring	100 feet	600 feet	25 acres with 73 acres interior forest

Next Steps

We will continue to use interagency, public and private participation to develop the Plan. We will also continue to get valuable input from our Stakeholder Focus Groups so that the planning process remains transparent and consumer-driven. New strategies will be developed to target schools and young people to enhance environmental education. We anticipate developing and presenting the draft Green Infrastructure recommendations for discussion with the focus groups by the end of 2008. We anticipate taking the draft Plan to the Planning Board for authorization to print and distribute for comment by June 2009. We will continue to brief the Planning Board at critical stages in the plan process.

Specific Tasks/Products for FY09

- Prepare draft green infrastructure recommendations (Summer/Fall 2008)
- Conduct public outreach for draft recommendations (Winter-Spring 2009)
- Prepare staff draft master plan (Summer 2009)

Attachment 1 - Summary of Focus Group Comments
Attachment 2 - Detailed Schedule of Milestones
Attachment 3 - Master Plan Schedule Chart
Attachment 4 - Proposed Program Element FY09

ATTACHMENT 1

Key Input From Focus Groups for GI Mapping Scenario Development

Environmental Focus Group

- 600 yard corridor width – considered optimal in some studies, but not a minimum
- Consider narrower corridors if 600 yards is not possible
- Criteria should be variable based on location in the County
 - Down-county/up-county
 - Developed/undeveloped
- Criteria should be science-based, do a literature review, minimum functionality is important in setting minimum size criteria
- Green Infrastructure is important in both rural and urban areas—however, the issues, needs, and strategies are different.
- Look at ways to consider utility ROWs in the Plan. Some are already maintained through selective herbicides as meadows or scrub/shrub, and have habitat value. Some could be converted to this type of management.
- Meet with Pepco to discuss their utility corridors
- Need to close gaps between greenways – e.g. Potomac to Patuxent--via Seneca Creek

ICC – currently seems to have insufficient passages for animals – we should not miss this opportunity

- If a natural area cannot be connected with others it can still be a significant green infrastructure resource
 - Significant isolated natural areas should be considered
 - Case by case review, prioritize
 - Future connectivity may be possible in some cases

MAGIC is trying to develop statewide and national corridors. Look at tie-ins with their efforts.

Urban development should have green space amenities.

Building Industry and Chambers of Commerce Focus Group

Developers want settled expectations—things need to be clear and predictable

Maps should show growth areas, roads, and priority funding areas

Opportunity to identify "shades of green": some areas might be more appropriate for smaller buffer or more dense development; some areas might be more appropriate for more green preservation

Green space needs to be a part of urban areas as well

Interagency and Public Land Managers Focus Group

Connections to the Potomac and Patuxent important

Identify Rural Legacy properties

Should make connections to Sugarloaf Mountain

Monocacy River is important

Look at GI connections with D.C.

Green Infrastructure is not just a County issue – good to include adjacent jurisdictions

Developed areas are a problem – especially how to handle redevelopment and infill situations

1. Do you have any suggestions for what general principles should be considered in setting minimum green corridor widths and node sizes, and maximum gaps?

Prince George's County M-NCPPC:

- a. In areas where development is desired – 50ft. minimum corridor width. In areas rural in nature – 200ft. minimum corridor width

DNR:

Look at continuity, connectivity and unique/sensitive habitats & RTE's. Minimum criteria should be science-based.

2. Do you have any suggestions for what types of areas should be included in the green infrastructure network?

Prince George's County M-NCPPC:

- Areas that protect/restore/enhance water quality
- Areas that protect/restore/enhance habitat

- Also consider water quantity/quality – stream corridor restoration

DNR:

All state-identified Green Infrastructure elements and connections

Agriculture and Forestry Focus Group

Water quality is an important issue

Need recharge to groundwater - Wells do not provide enough water

Municipalities and Large Civic Organizations Focus Group

Connectivity of natural areas is key

Connectivity between existing natural resources and urban/suburban areas is important

- People value forests, streams, and meadows – people like to get close to nature and appreciate paths that provide connectivity to it.
 - In terms of green infrastructure, urban and rural areas are both important.
 - Headwaters seem to make the most difference--once streams get down-county it may be too late to do much to improve water quality. It seems best to give priority to protecting headwater areas.
 - Having places to watch birds, butterflies and other animals is important
- The GI Plan should consider the overall context with adjoining jurisdictions.
 - The Plan should consider Legacy Open Space (LOS), and the Agricultural Reserve.

Priorities on making connections, even in urban areas connections could be developed.

Natural Areas Recreational Users Focus Group

- Connectivity is essential to all natural area recreational activities
- Connectivity of natural areas is important for the health of people and the land.
- It is important to be able to get to natural areas even from the most congested areas.
- Even small connections can be important
- Watershed protection is a key element.
- Think strategically. Natural hub size may be increased in certain areas.

Once Seneca is connected, it will connect an enormous network

Natural area fragmentation is a problem— need contiguous natural areas to protect headwaters – be strategic in doing this.

There needs to be as much forest around trails as possible.

Maintaining and enlarging park and other natural areas to increase “internal forest” and to increase connectivity.

1. Do you have any suggestions for what general principles should be considered in setting minimum green corridor widths and node sizes, and maximum gaps? (In other words, what should the size criteria be based on?)

- Minimum size should offer a real visible/audible buffer from roads and development. Obviously, this would change from summer to winter.
- Gaps should be no larger than what leaves an obvious “island-hopping” connectivity.

1. Do you have any suggestions for what types of areas should be included in the green infrastructure network? (e.g. What types of areas are of Countywide Significance?)

- Headwaters areas: meadows, basins and narrow ravines all the way to the divides if at all possible; if not, at least include a forest buffer.
- Wetlands, including seasonal ponds and seasonal wet meadows
- Unique plant communities or geological areas (shale barrens, or serpentine areas, etc.)
- Any large undeveloped or reclaimed area. The county will be built out within the next few years. Any land that can be saved is absolutely essential for quality of life recreation, to say nothing of eco-sustainability.

3. Should any areas that cannot be connected to a larger network be included? If so, what kind?

- Non-tidal wetlands of all types
- Pockets of mature forest
- Any area offering an “island-hop” to other pockets or between connected corridors.

ATTACHMENT 2

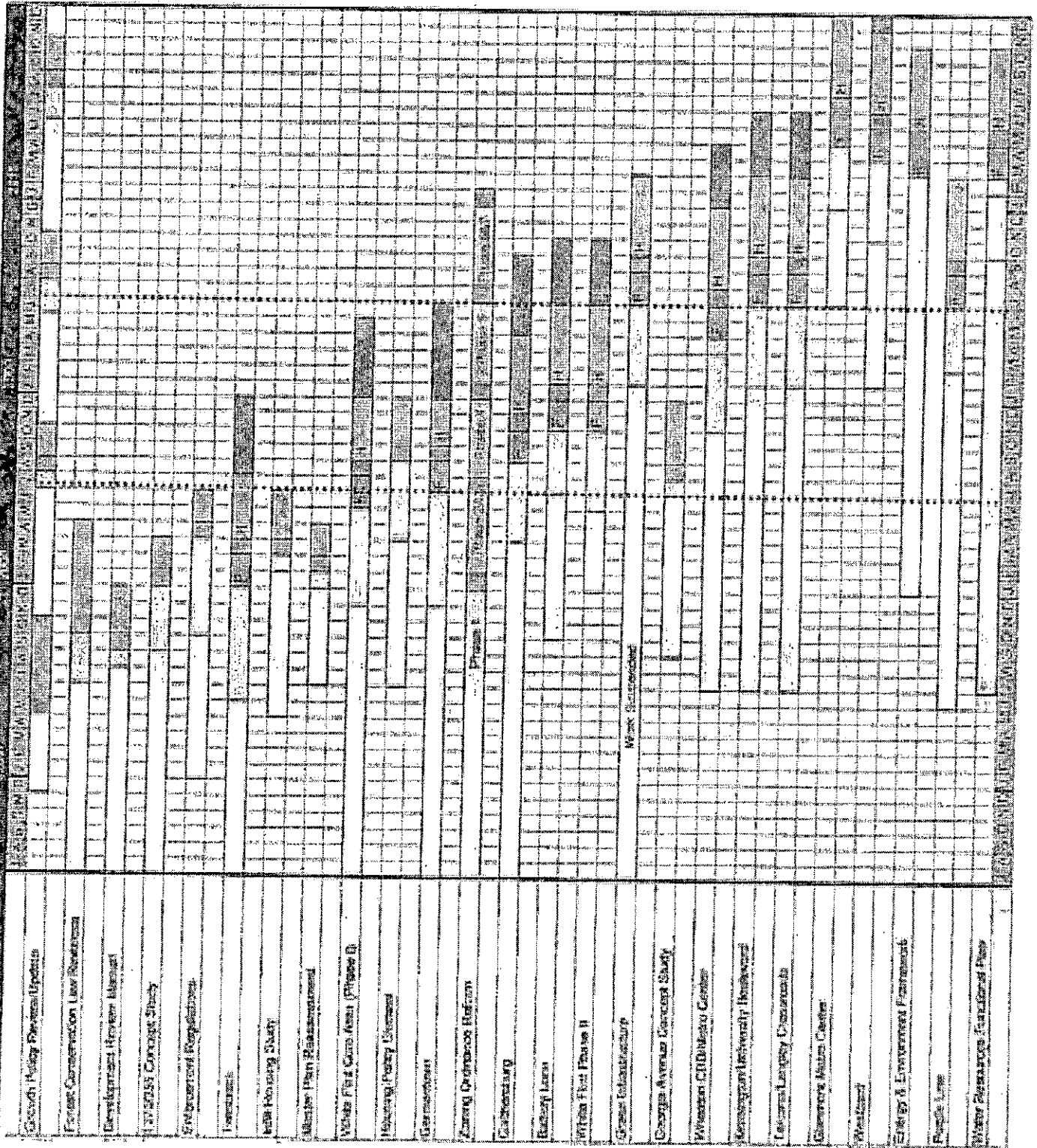
DRAFT
Green Infrastructure Functional Master Plan
 Plan Preparation Timeline and Milestones, 11/26/07

Preliminary Target Date	Milestone/Event
Dec 2007	Initial Mapping Analysis <ul style="list-style-type: none"> - Prepare Technical Work Plan - Identify any necessary fieldwork - Detail Tasks and Responsibilities
Jan 2008	Reassess Forest Layer Issues <ul style="list-style-type: none"> - Time and resources to correct - Begin correction of layer Begin Preliminary Mapping analysis <ul style="list-style-type: none"> - Prepare for Interactive GIS sessions
Feb - Mar 2008	First Cut Mapping of GI with different criteria based on General Plan refinement of 1993 GIS Mapping Interactive Sessions <ul style="list-style-type: none"> - Select GI mapping approach for scenario development Resume Public Outreach Meetings <ul style="list-style-type: none"> - Determine public outreach strategy for remaining time of plan development - Prepare Public Outreach Work Plan <ul style="list-style-type: none"> - Detail Tasks and Responsibilities
Mar 2008	Prepare Regulated Area GIS Layer Prepare base Natural Resources map
Mar - April 2008	Finish Corrections to Forest Layer Formulate GI Plan Alternative Mapping Scenarios Preparation of Plan GI Alternative Mapping Scenarios Preparation for GI Plan Public Meeting to present scenarios and gather input
May 2008	GI Plan Mapping Scenarios Public Meeting
June 2008	Brief Planning Board on results of the Plan Public Information Meeting
June-Nov 2008	Develop draft GI Plan
Dec 2008	Second Public Meeting to present Preliminary Draft Plan
June 2009	Present Draft Plan to Planning Board/Authorization to print and distribute for comment

ATTACHMENT 3

Schedule: Master Plans and Major Projects

- Staff
- Planning Board
- County Executive
- Council
- Council Review
- SWA
- F = Final Draft
- H = Hearing
- ... Outlines FY04
- UNFUND



ATTACHMENT 4

GREEN INFRASTRUCTURE FUNCTIONAL MASTER PLAN

DESCRIPTION/SCOPE

This plan will identify and evaluate sensitive and important environmental features throughout Montgomery County and ways to connect them into a comprehensive system. The Plan will develop strategies and recommendations to make this vision a reality and will map interconnected natural areas of countywide significance. The Plan will also rank the relative importance of natural resources to help direct conservation, mitigation, restoration, and enhancement decisions. Priorities will be established to assist development review, master planning, park acquisition, and budgeting.

Lead Division: Countywide Planning

BENEFITS TO THE COUNTY

- Establish environmental policy choices for the Planning Board and implement the environmental objectives and strategies of the 1993 General Plan Refinement
- Support the development pattern outlined in the General Plan and by Smart Growth initiatives
- Implement recommendations of the latest approved Land Preservation, Parks, and Recreation (LPPR) Plan
- Streamline the preparation of the Park, Recreation, and Open Space (PROS) Strategic Plan, and complement the Legacy Open Space (LOS) program
- Provide a broader understanding of the county's natural areas and how to achieve a functional green space network
- Streamline the review and mitigation process for public and private development projects to improve its environmental effectiveness

PERFORMANCE OUTPUTS AND BASELINE INDICATORS

% of milestones completed within target timeframes.

Number of outreach sessions conducted on Functional Plan.

Budgeted Resources	FY08		FY09	
	WY	\$	WY	\$
Personnel	1.00	\$149,089	1.00	\$169,800
Professional Services				
Publications				
Other Operating Expenses		\$20,667		\$21,800
Chargebacks				
Total		\$169,756		\$191,600
Revenue Source: Administration Fund				



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

To: Faroll Hamer, Acting Director

From: Mark Pfefferle, Planner Coordinator
Environmental Planning Division, County-wide Planning

Date: January 31, 2007

Re: Final Report
M-NCPPC Forest Conservation Task Force

Along with members of the M-NCPPC Forest Conservation Task Force, I am please to submit this final report outlining our recommendations on ways to improve the implementation and administration of the Forest Conservation Law. This is a collaborative effort of all 9 members of the task force you appointed in January 2006. Representatives of environmental and civic groups, the development community, and M-NCPPC staff have met over the past eight months to discuss the implementation and administration of the Forest Conservation Law. The task force is composed of 4 representatives of environmental and civic groups, 4 members of the development community, 1 representative from M-NCPPC Environmental Planning. Many other staff members participated at every meeting.

The task force received briefings on the Forest Conservation Law and Regulation, natural resource inventories and forest stand delineations, forest conservation plan review and implementation, and violations. The task force received presentations on the real and perceived shortcomings of the Department's implementation of the law from Environmental Planning staff, a forest conservation qualified professional, and a private citizen.

Comments and suggestions for improvement were solicited from all members after the presentations were made. Non task force participants, who had attended and observed the task force meetings, also provided suggestions. It was particularly beneficial and enlightening to have a representative of the Maryland Department of Natural Resources in attendance at all meetings, for this person provided insight and explanation on problems and solutions from other local governments.

As previously stated, the purpose of the task force was to assess Environmental Planning's implementation of the Forest Conservation Law and Regulations and to suggest ways to improve performance and responsiveness. Even though beyond the explicit scope of the Task Force some members voiced support for changes to the existing Forest Conservation Law and also for the creation of a separate tree preservation law. Since these two areas were beyond the purview of the task force, this report does not take a position or make recommendations on these topics. However, these issues need to be discussed at greater length in other forums.

At our final meeting on January 10th, several task force members noted that throughout this process, members of the group most often agreed and succeeded in finding common ground to use as a basis for many of our recommendations. The end goal was the same for all members: improvements in the operational aspects of the existing Forest Conservation Law that would make the law more readily understood by stakeholders and less complicated to implement or enforce. Members concluded their work agreeing that the tone of our meetings was always collegial and professional, even when there were points on which various members disagreed. This was a rare and interesting opportunity for members of the business, environmental and civic community to work together toward a common goal.

**M-NCPPC Forest Conservation Task Force
June 2006 – January 2007**

Members

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West Montgomery Civic Association
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Executive Summary

This report summarizes the recommendations of the Forest Conservation Task Force to improve the efficiency and administration of the forest conservation program. The Task Force's primary function was to serve in an advisory position to Acting Planning Director Faroll Hamer in improving the forest conservation program. Throughout the meetings the members worked cooperatively and reached consensus on the recommendations and the themes discussed in the final report. Highlights of the Task Force's recommendations are presented below:

- Develop more detailed checklists for NRI/FSD submissions and make those checklists widely available. Also create an instruction sheet for submitting NRI/FSDs that clearly explains what is expected in a complete application.
- Continue the current method of NRI/FSD plans submissions but when an application is incomplete it will be rejected and returned to the applicant. Applicants, with rejected submissions, will then be required to make an appointment to submit their applications.
- Conduct site visits for all NRI/FSDs and requests for forest conservation plan exemptions.
- Environmental Planning will conduct a weekly triage of new submissions to determine the order of review.
- Planning Director will officially designate to the Forest Conservation Inspectors the authority to issue stop work orders.
- Develop an effective education campaign to educate the public on forest conservation and forest conservation easements.
- Create an electronic tracking system for all violations that clearly indicates the type of violation and notifies the inspectors on milestones particular to that violation.
- Develop standard notes, details, and information to be incorporated onto all forest conservation plans and upload the information on the M-NCPPC homepage, or on a new website dedicated to forest conservation issues in Montgomery County.
- Authorize additional people the ability to sign final forest conservation plans.
- Increase staffing for the program by strongly supporting the 2 additional plan reviewers and 2 additional forest conservation inspectors that are currently recommended in the FY08 Departmental budget.
- Update the Trees Technical Manual.
- Prepare procedural manuals documenting how staff should review and approve NRI/FSDs, Tree Save Plans, and Forest Conservation Plans.
- Prepare procedural manuals for determining and documenting if forest conservation violation occurred, and for assessing penalties for these violations, including establishing guidelines for corrective actions.
- Identify public and private lands for reforestation.
- Digitize all forest conservation plans and make them available online.
- Educate project managers in County agencies on plan submission requirements.

FINAL REPORT

Report of the M-NCPPC Forest Conservation Task Force

This report summarizes the recommendations of the Forest Conservation Task Force to improve the efficiency and administration of the Forest Conservation program. The Task Force met from late June 2006 to January 2007. The Task Force consisted of 9 members, four from the development community, four representing the interests of environmental and civic groups, and one person from M-NCPPC Environmental Planning (EP). Other M-NCPPC staff members were in attendance and contributed to the discussions. Task Force members were briefed with presentations on the forest conservation law and regulations, natural resource inventories and forest stand delineations, forest conservation exemptions and tree save plans, procedures preparing and reviewing forest conservation plans, implementation of the forest conservation plans, and violations. There were also presentations on the shortcomings to implementing the law and regulations by Environmental Planning staff, a forest conservation plan preparer, and a private citizen. All the presentations and briefings were used to further the task force's understanding of staff interpretation and implementation of the law and to identify shortcomings to foster discussion and suggestions for improvement.

Throughout the process the task force worked cordially and achieved consensus on all recommendations that follow. Agendas and briefings materials were prepared for each meeting. Task force members received the briefing materials prior to the next meeting. Meeting summaries were prepared and sent to each task force member for review and discussion.

The pages that follow are arranged into sections beginning with "current practice", followed by "problem", and "proposed solution".

The purpose of the Task Force was to examine how M-NCPPC implements the forest conservation program and to make recommendations to improve the program. The intent of the Task Force was not to suggest changes to the law or regulation, unless it was to clarify the law.

1. Environmental Planning Will Develop Clearer Checklists To Be Used By Plan Reviewers And These Checklists Can Be Included With The Submissions

Current Practice. Section 106 of the Forest Conservation Regulation identifies what information must be included on a NRI/FSD for it to be considered complete. However, the checklist contained on the NRI/FSD application is not consistent with the regulation. In addition, applicants rarely complete the checklist on the application and staff does not review this portion of the application as part of the completeness check.

Problem. Applications are sometimes submitted with missing, incomplete, or erroneous information. All of which lead to delays reviewing and approving NRI/FSDs. In addition, the submission requirements are unclear for forest conservation exemptions. There is no guidance in the Forest Conservation Regulation whether a NRI/FSD, a simplified NRI, or an existing conditions plan should be submitted to support an exemption.

Proposed Solution. Environmental Planning will develop more detailed checklists for NRI/FSD submissions and make those checklists widely available. Environmental Planning will also create an instruction sheet for submitting NRI/FSDs and forest conservation exemptions that clearly explain what is expected for an application to be complete.

2. Submissions of NRI/FSDs

Current Practice. Natural Resource Inventories/Forest Stand Delineations (NRI/FSDs) and exemptions from submitting forest conservation plans are currently submitted directly to Environmental Planning by placing the documents into an inbox. The documents are date stamped received and then forwarded to an Environmental Planning Technician for an initial completeness review. This includes reviewing the application to determine that it is properly signed and filled out, determine if the appropriate fee is included with the application, and processing the application fee. No technical reviews are conducted at this time. Once the application is complete, the Environmental Planning Technician creates a HANSEN entry for each submission, assigns an NRI/FSD number to the plan, outlines the property areas covered by the application in GIS, and then forwards NRI/FSDs to Ms. Bunnag and exemptions from forest conservation plans submissions to Mr. Penn for review. Ms. Bunnag assigns the NRI/FSDs to the appropriate technical reviewer. The forest conservation law requires Environmental Planning to provide comments or review NRI/FSDs and forest conservation exemption requests within 30 days of the date of receipt.

There is an existing policy between Environmental Planning and the County Department of Public Works and Transportation (DPWT) requiring DPWT to submit all applications on an appointment only basis. DPWT must contact Environmental Planning to arrange a meeting before an NRI/FSD or exemption request can be submitted.

Problem. NRI/FSD and forest conservation exemption requests are sometimes submitted without the proper fee; applications are incomplete or not signed; no signatures on the plans; or the application and drawings are submitted missing information. When information is missing,

or the application is incomplete, the Environmental Planning Technician contacts the applicant to get the appropriate information before entering the information into HANSEN, assigning plan numbers, and forwarding the plan for technical review. Sometimes, weeks or months pass before the applicant provides the appropriate information, yet the applicant believes the 30-day review period begins on the date the plan was submitted to Environmental Planning, even though the application is incomplete.

Proposed Solution. By consensus, the task force agreed to continue the current method of plan submissions. The task force also agreed, by consensus, that incomplete applications would be immediately rejected and returned to the applicant. Applicants, with rejected submissions, will then be required to make an appointment to submit their applications. Once an application is received, the Technician will do a completeness check to determine if the application continues through the review process or is returned to the applicant. Environmental Planning will make efforts to meet with rejected applicants within 10 business days from the date the applicant requests the meeting. The Technician will notify all applicants, via email, when their application is complete and the beginning of the 30-day review period. This policy will be effective for all applicants not including the Department of Public Works and Transportation. DPWT will continue submitting applications in the method previously agreed to by DPWT and Environmental Planning.

Environmental Planning also will modify the application so that it will include entry for "Date Received", "Date Rejected", "Date Resubmitted", and "Date Approved".

3. Staff Will Conduct Site Visits All Forest Conservation Exemptions

Current Practice. Current staffing levels and the number of exemption requests makes it impossible for Environmental Planning staff to conduct field visits for all forest conservation exemption requests within the 30-day regulatory deadline. As a result, staff reviews exemptions with electronic data sources such as aerial photographs and GIS databases. This method does not allow the existing features including the diameter, health, or tree species to be verified.

Problem. Applicants have submitted exemptions with incorrect information and statements related to the absence or presence of forest and/or specimen trees and the location of specimen trees on or near the site. It is only during the on site pre-construction meeting the Forest Conservation Inspectors determines misidentified or incorrectly located trees. This makes it difficult for the Forest Conservation Inspectors to adequately protect those trees, especially after the Department of Permitting Services has issued erosion and sediment control and building permits.

Proposed Solution. The task force agrees that all NRI/FSDs and requests for an exemption from submitting forest conservation plan be field verified by staff.

4. Implement a "Triage" Practice for Applications Received Versus Review Based On Date Received

Current Practice. It is Environmental Planning's policy to review NRI/FSDs and requests for

exemptions in the order they are received, regardless of the complexity of the plans. This policy was implemented to create fairness and equality to all applicants and to avoid all perceptions of favoritism. All NRI/FSDs reviews are field verified.

Problem. There is a perception that these reviews are taking too long for the initial review, or subsequent reviews of plans. However, exemption requests that are perceived as simple and straightforward by applicants sometimes lack the necessary information to support the exemption request, and/or the applicant applies for an exemption that is not appropriate to their property. Many exemptions require tree save plans, which are not typically submitted with an exemption request. This leads to approval delays particularly for plans only associated with sediment control plans.

Proposed Solution. Environmental Planning to conduct weekly triages of initial submissions to determine the order of review. Staff guidelines will be developed to identify which types of submissions are simple and straightforward enough to go through an expedited review and which will require more detailed analysis. Any plans that require additional information will be flagged immediately after the weekly triage and the applicants will be contacted to provide the information. This recommendation should be reviewed after six months. If this process creates too many problems, such as the plan not showing specimen trees or environmental buffers, staff will return to the old policy where the plans are reviewed in the order received.

5. Delegate Authority to Issue Stop Work Orders

Current Practice. Currently the Forest Conservation Inspectors are unable to issue stop work orders when they have determined a potential violation to the forest conservation law has occurred. Stop work orders are signed by the Director of the Planning Department. A Senior Manager and Chief must justify the stop work order to the Director prior to the issuance of the order. If the Director agrees a stop work order is necessary, one is prepared and the Forest Conservation Inspector delivers the stop work order.

Problem. When the Forest Conservation Inspectors respond to a complaint and it is determined that a potential violation has occurred, the Forest Conservation Inspectors are unable to instantly stop the violator from continuing the activity. They can issue a citation but the violator can continue with the activities until the stop work order is issued. Days may pass before a stop work order is issued.

Proposed Solution. Section 22A-17 of the Montgomery County codes states that the Planning Director may issue a corrective action as a part of a violation to the forest conservation law. Under Section 22A-3 of the Montgomery County code, the "Planning Director means the director of the Montgomery County Park and Planning Department, or the Director's designee". The Planning Director should officially designate authority to the Forest Conservation Inspectors to issue stop work orders and to lift these orders after the violations have been corrected. This will allow the inspectors to immediately require the cessation of activities that violate the forest conservation law. This system is currently in place for inspections at the County of Department of Permitting Services (DPS) and was previously used by M-NCPPC.

6. Create A Central Hotline Phone Number And Email Address To Report Violations

Current Practice. Individuals that identify forest conservation violations either contact Environmental Planning or Development Review to report possible violations to the forest conservation law and conservation easements. The M-NCPPC homepage has a "concerns or complaints" section to report violations and identifies both a phone number and email address for complaints. Few forest conservation complaints are received by this method. If Environmental Planning receives a complaint it is immediately forwarded to the appropriate Forest Conservation Inspector for investigation and action. If a complaint is received by the hotline telephone number or via email, Development Review staff will log it into a complaint database and assign it to the appropriate inspector for investigation and action.

Problem. Individuals are unsure whom to contact when they perceive a violation to the forest conservation law or easement has occurred. If a person does not have access to the Internet they would not know the number to contact for violations, or may not even know that M-NCPPC is the appropriate lead agency to contact for violations to the forest conservation law. Very few forest conservation complaints are received via the hotline number or email address.

Proposed Solution. M-NCPPC should better educate and communicate to the public whom to contact when a potential violation has occurred to the forest conservation law or a forest conservation easement. This should involve the M-NCPPC Community Outreach Division and will involve creating a more informative page on the website about the Forest Conservation Law. Additionally, there should be advertisements in the local newspapers educating the public on conservation easements, better directives on the County and M-NCPPC websites, mailings and tax bill inserts, information on who to contact with a complaint, as well as presentations at major civic groups. Staff will continue discussions with the Department of Parks to determine if M-NCPPC Police Officers could be used to inform people of potential violations to conservation easements during evenings and weekends.

7. Develop A Violation Tracking System

Current Practice. There currently is no system to track forest conservation violations that is easily accessible to all M-NCPPC staff and to the public. There is a system to track complaints, corrective action implementation, and timely payment of financial penalties, but not violations.

Problem. The lack of a tracking system prevents the Forest Conservation Inspectors from knowing if the violators have completed required actions within the timeline established by the citation or by the civil administrative order. There are also lengthy time delays within the M-NCPPC legal department to review civil administrative orders for legal sufficiency prior to the issuance of that order. The delay in issuing the civil administrative order also creates a perception that M-NCPPC is not taking appropriate actions to resolve the problem.

Proposed Solution. M-NCPPC Forest Conservation Inspectors will work with the M-NCPPC Research and Technology Division to create an electronic tracking system for all violations. The system would clearly indicate the type of violation and send messages to the M-NCPPC Forest Conservation Inspector, when the accused must undertake specific actions to avoid additional

financial penalties and when they perform other activities to comply with the civil administrative order.

8. Upload Forest Conservation Standards, Notes, And Details Online

Current Situation. Staff provides updates to standard notes and details to forest conservation plan preparers as they are developed. The 1994 Trees Technical Manual includes tree protection details but not standard notes. The purpose for the revision of the Manual was, among other things, to update the tree protection details and provide standard notes.

Problem. The result is plan submissions with disparate notes and specifications that require plan revisions. This leads to additional reviews and time by both the plan preparer and Environmental Planning in approving final forest conservation plans. Environmental Planning staff was updating the Trees Technical Manual, but because of staffing shortages and workload increases completion of the Trees Technical Manual was delayed.

Proposed Solution. Staff will develop standard notes, details, and information to be incorporated onto all forest conservation plans and upload the information on the M-NCPPC homepage, or on a new website dedicated to forest conservation issues in Montgomery County. Since the details and standard notes are an appendix to the Trees Technical Manual the completion of this task can occur and be used prior to the completion and Planning Board approval of the revised Trees Technical Manual.

9. Modify/Expedite Process To Sign Approved Plans

Current Situation. Only a senior manager, or supervisor, can approve the technical review aspects of a final forest conservation plan. The Planning Board approves a preliminary forest conservation plan that establishes the amount of forest to be cleared, saved, and the location of conservation easements, but staff approves a final forest conservation plan that includes the planting specifications, tree species, tree protection measures, etc. Applicants cannot begin clearing prior to the approval of the final forest conservation plan.

Applicants submit a final forest conservation plan directly to Environmental Planning reviewers. When the reviewer determines the plan is ready for approval, the reviewer prepares an approval letter for the supervisor's signature. The supervisor signs the approval letter and the letter is sent to the plan preparer. The plan preparer puts a copy of the letter on the final forest conservation plan and resubmits it to Environmental Planning for the Supervisors signature. Once the supervisor signs the plan, original hardcopy files are kept and the mylar returned to the plan preparer.

Problem. The current process results in delays by generating an approval letter and requiring the approval letter to be included on the final forest conservation plan. With only 2 supervisors in Environmental Planning, if a supervisor is not available for signing the plan, there is an additional delay in getting the approved plan to the applicant.

Proposed Solution. Some members of the task force see the merits of having the approval letter

on the final forest conservation plan. Others see the merits of having standard conditions put on the plan by the plan preparer. There are merits to both approaches. Standard approval conditions, such as "no clearing or grading prior to submission and approval of financial security, etc.," could be added to the standard notes section and included on the forest conservation plan by the plan preparer. Whenever there is a non standard condition, i.e., one that is not on the standard list of conditions, the approval letter must be attached to all reproduced copies of the final forest conservation plan. Regardless, staff will still need to prepare a letter approving the final forest conservation plan. Additional people need signature authority to approve final forest conservation plans to reduce the signature delays. When the forest conservation master planner is hired, that person should also have the ability to sign approved plans. In the absence of the new Master Planner, the Planner Coordinators with forest conservation experience should also have the ability to approve final forest conservation plans for plans where they are not the technical reviewer.

10. Increase Staff With Contractual Employees (Short Term) And Permanent Employees (Long Term)

Current Situation. There are four technical reviewers, one intake technician, and one supervisor reviewing NRI/FSDs, exemptions from submitting a forest conservation plan, preliminary and final forest conservation plans, tree save plans, and amendments to approved forest conservation plans associated with preliminary plans of subdivision, site plans, and sediment control plans. There are two technical reviewers and one supervisor reviewing preliminary and final forest conservation plans associated with special exceptions, mandatory referrals, and rezoning cases. There are three forest conservation inspectors, each of which is responsible for the implementation of forest conservation plans, enforcement of the forest conservation law, and enforcement of preliminary plans of subdivisions and site plans.

In fiscal year 2006, Environmental Planning received 404 NRI/FSDs and requests for an exemption from forest conservation. Of this total 163 (approximately 40%) were NRI/FSDs that required site visits and have or will eventually result in forest conservation plans. The remaining 241 submissions (approximately 60%) were for exemption requests with approximately 2/3 of the exempted plans requiring tree save plan submissions and approvals.

There are approximately 1500 forest conservation easements in the County. As the number of approved plans and permanent protections such as conservation easements increase over time, so do the number of complaints and requests to encroach into the easement areas.

Problem. All NRI/FSD, exemption requests, and forest conservation plans have regulatory timelines in which the plans must be reviewed. If the applicant does not receive comments within that timeframe, the plan is *de facto* approved. Environmental Planning is responding to submissions within 1 or 2 days of the regulatory deadlines on numerous plans. Some plans have been *de facto* approved because staff was unable to respond within the regulatory timeframe. Because of the staff shortages and workload demands, Environmental Planning does not conduct site visits for applicants requesting an exemption from submitting a forest conservation plan. Since there is insufficient staff to backfill for reviewers out with sickness or vacations, plan reviews fall behind and regulatory deadlines are exceeded.

The forest conservation inspectors do not have the manpower to proactively enforce conservation easements, follow-up on civil administrative orders; attend pre-construction meetings jointly with the DPS sediment control inspector, and conduct post-construction meetings. Assessing compliance and enforcement of conservation easements has occurred on a complaint basis.

Proposed Solution. Hiring contractual employees to review NRI/FSDs and to assess compliance with conservation easements can alleviate some of the staffing problems. However, contractual employees cannot provide the long-term commitment to follow a forest conservation plan from the beginning to end, which includes the preliminary FCP, final FCP, plats, bonding, and bond release. Contractual forest conservation inspectors can alleviate some of the proactive work needed by the inspectors to ensure compliance with the terms of the easement, but the number of perpetual easements and acreage covered by easements grows each year. The Task Force supports the hiring of 2 permanent employees for plan reviews and 2 additional forest conservation inspectors to proactively enforce the conservation easements and perform pre-construction meetings, planting meetings and final inspections in a timely fashion.

11. Complete Revisions To The Trees Technical Manual

Current Situation. The current Trees Technical Manual used by M-NCPPC was completed in 1994. The manual was never updated as a result of major revisions to the forest conservation law in 2001 nor amended to reflect ever-advancing state-of-the-art practices for forest/tree protection and planting. Environmental Planning staff has on numerous occasions attempted to update the manual, but increases in regulatory workloads, inter-departmental transfers, and retirements, have prevented an update to the manual for public distribution and comments. There are still major sections of the Manual to be written and updates to appendices needed to reflect current practices. With current workloads and staffing shortages it is unknown when the draft will be available to public comment and Planning Board discussion.

Problem. The current Trees Technical Manual is out of date, does not include advances in tree protection, forest planting specifications, does not address non-native invasive management control and deer browse, and excludes any changes reflective of the 2001 amendments. Environmental Planning is unable to provide staff to complete the manual and also maintain the same regulatory workload without exceeding the regulatory deadlines. In addition, there are discussions on revising the Forest Conservation law and implementing a tree ordinance. Implementation of a new tree ordinance, in itself, is not sufficient reason to delay completion of the trees technical manual. However, legal changes, such as those proposed by the C&O Task Force, could create substantive revisions to a new Trees Technical Manual.

Proposed Solution. Environmental Planning currently has an opening for a Forest Conservation Master Planner. One of the responsibilities of this person should be to restart the update of the tree technical manual particularly as it relates to standard details and notes, and leave the applicability sections until it is determined whether or not the County Council will proceed with changes to the Forest Conservation law in the next year.

12. Preparation Of Staff Procedural Manuals For The Review And Approval Of NRI/FSDs, Tree Save Plans, And Forest Conservation Plans

Current Situation. There are no procedural manuals for staff use in reviewing and approving NRI/FSDs, tree save plans, or forest conservation plans. The information is passed from one employee to another through the review of plans and peer reviews. Environmental Planning staff has started compiling "Staff Practices" but these practices are neither finalized nor publicized.

Problem. New staff slowly learns how to review and approve NRI/FSDs, tree save plans, and forest conservation plans, prepare comment sheets for applicants, process bonds and maintenance and management agreements.

Proposed Solution. Concurrently with the update of the Trees Technical Manual, Environmental Planning Staff shall prepare procedural manuals documenting how staff should review and approve NRI/FSDs, Tree Save Plans, and Forest Conservation Plans. Depending upon the schedule for any revisions to the Forest Conservation Law, staff may be able to prepare a procedural manual for the review and approval of NRI/FSDs prior to approval of the Trees Technical Manual.

13. Preparation Of Procedural Manuals For Determining Violations, Documenting Violations, Assessing Penalties And Corrective Actions

Current Situation. There is no procedural manual for Forest Conservation Inspectors to determine and document if a forest conservation violation occurred, or in assessing penalties and establishing corrective actions. Most of these determinations are made in the field (such as the financial penalty associated with a civil citation). Corrective actions are often determined when the inspector consults with the appropriate environmental planning reviewer.

Problem. There is a perception that inspectors are inconsistent when assessing penalties including civil administrative actions and financial amounts associated with citations, and that they may be operating solely and without guidance, or without integral legal support.

Proposed Solution. Forest Conservation Inspectors, in concurrence with legal staff, prepare a procedural manual for determining and documenting if forest conservation violation occurred, in assessing penalties, and establishing guidelines for corrective actions. This activity can only occur with additional Forest Conservation Inspectors to reduce the existing workload and with an Attorney assigned to forest conservation issues.

14. Develop A Program To Use Fee-In-Lieu Funds

Current Situation. There is no program in place to use fee-in-lieu funds collected from forest conservation plan applicants.

Problem. M-NCPPC has been collecting in-lieu-fees since 2003. No money has been allocated or spent to meet the obligations passed onto M-NCPPC from the developers. The longer the money sits the more expensive it becomes to plant forests to meet the acreage obligations. With

a shortage in forest conservation banks, the number of applicants requesting use of the fee-in-lieu option is increasing, but there is no program in place to use the funds collected.

Proposed Solution. Staff needs to identify sites for reforestation. Some properties acquired with Legacy Open Space funds are identified for reforestation and should be planted with the concurrence of the Director of Parks. However, the amount of potential land available for planting on Legacy Open Space properties does not meet the current obligations passed onto M-NCPPC. In order to use the funds, M-NCPPC needs to develop a Request for Proposals (RFP) and receive bids by interested parties in conducting the planting work. Only after a contract is issued can money be allocated for planting by non M-NCPPC employees. Once the Forest Conservation Master Planner is hired, that person should identify planting areas both on private and public lands, develop and issue a RFP for plantings, and function as the contract project manager. The Master Planner will also need to approach the Department of Parks on using in-lieu fees to plant parkland identified for reforestation.

15. Develop And Implement An Education And Outreach Program to Identify the Reasons why Trees and Forest Should be Protected and what Activities May Occur in Conservation Easements.

Current Situation. M-NCPPC has neither developed nor implemented an aggressive outreach program for the public on informing what can and cannot occur in conservation easements, or on the private and societal benefits of trees and forests. M-NCPPC has prepared fact sheets and they are currently available on the website and in Environmental Planning on what activities are permissible in conservation easements. Education for developers and plan preparers is primarily through the Trees Technical Manual. However, as previously discussed the Trees Technical Manual needs to be updated.

Problem. Few people are aware that conservation easements exist on their property and they are unsure what can occur in the easement. There is also confusion even when a homeowner is aware that conservation easements exist, and who to contact if they have an easement. It is also unclear to individuals what activities require (i.e., make applicable) compliance with the forest conservation law, and how to achieve compliance.

Proposed Solution. Environmental Planning and the M-NCPPC Community Outreach Division to develop an effective and continuous strategy to educate the public on the activities that can occur in conservation easements, the benefits of forests and trees and how to plant new trees. The education can include new brochures and publications, inserts into tax bills, changes to real estate contracts, clearer information on a website dedicated for forest conservation, and continuous education for plan preparers and other Montgomery County agencies. The M-NCPPC homepage to provide links to websites, such as the Montgomery County Department of Environmental Protection for information on the value of trees. The educational materials should also explain the range for penalties for violations.

16. Digitize And Make Publicly Accessible Online Approved Plans And Easements

Current Situation. Currently, interested parties must come to Environmental Planning to review

or purchase a copy of an approved NRI/FSD or forest conservation plan. Conservation easements are available online at the state's plat website. M-NCPPC is in process of digitizing all approved final forest conservation plans, NRI/FSDs, and conservation easements. The conservation easements will be uploaded onto the M-NCPPC GIS layers and available through the M-NCPPC website.

Problem. Information is not readily available for the public for all approved forest conservation plans. The public is not aware that conservation easements can be viewed on the state's plat website (www.plats.net).

Proposed Solution. Continue the current efforts to digitize all plans and inform the public of the State's plat website so that plats can be reviewed online.

17. Allow Forest Mitigation Planting on Public Lands

Current Situation. Currently there is a shortage of readily available planting sites and approved forest conservation banks in Montgomery County. There is primarily one banker in the County who operates one bank at a time.

Problem. Readily available options to meet offsite-planting requirements are insufficient to meet demands. When there are delays in approving banks, or the owner withdraws their banking proposal, developers are left without banking options. Expanded mitigation opportunities, on public and private lands, must be developed to meet the continuing need.

Proposed Solution. The Task Force suggested that forest conservation mitigation sites be identified and created on the public lands for use by private developers. The Department of Parks has a long-standing policy that does not support private developers using parkland to meet their forest planting requirements. Environmental Planning staff will convene a meeting with appropriate Parks Department staff to determine if and under what circumstances they may allow developer contributions to be used on parkland. Since forest conservation banks cannot be created on parkland, because the land is already protected, the only opportunity would be for mitigation planting and fee-in-lieu plantings of areas identified by the Parks Department. However, efforts still need to concentrate on minimizing forest loss and fragmentation. Foremost among the consideration would be consistency with Park use and stewardship objectives in the public interest.

Environmental Planning staff has contacted numerous property owners and have a few proposed banks in the review process. However, broader outreach to targeted landowners and Homeowner Associations should be conducted, but requires a dedicated effort to do so.

18. Greater Inter-Governmental Cooperation

Current Situation. Environmental Planning frequently receives incomplete NRI/FSDs and forest conservation plans for development by government agencies. Environmental Planning treats all public and private applicants equally in terms of details and in plan reviews. Environmental Planning has in the past provided special considerations for schools for public safety issues (i.e.,

allowing limited clearing understory clearing) and not requiring conservation easements on protected and planted forests. Recently, Environmental Planning started requiring the schools to record conservation easements on protected and planted areas and DPWT to make submissions on an appointment only basis.

Problem. The incomplete and inaccurate submissions by government agencies create unnecessary delays and additional reviews.

Proposed Solution. Environmental Planning had previously proposed meeting with governmental agencies to educate the project managers on what must be shown on a NRI/FSD, when a tree save plan is required, and when a forest conservation plan must be submitted. Environmental Planning will schedule meetings with the appropriate government agency project managers to educate them on the submission requirements and how to fulfill the obligations for the forest conservation plans in the most effective and efficient manner.

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MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
<u>Recommendation:</u> Develop more detailed checklists for NRI/FSD submissions and make those checklists widely available.	A new NRI/FSD submission checklist has been developed and being tested by staff for utility. It will be distributed to the public shortly and available on an updated forest conservation website. Checklist on the application still needs to be revised		✓		
<u>Recommendation:</u> Create an instruction sheet for submitting NRI/FSDs that clearly explains what is expected in a complete application.	Instruction sheet will be introduced at the same time as the new checklist		✓		
<u>Recommendation:</u> Continue the current method of NRI/FSD plans submissions but when an application is incomplete it will be rejected and returned to the applicant.	No new action is necessary for complete applications; however companies and professionals knowledgeable of the submission requirements but consistently submitting incomplete applications are now required to submit future applications by appointment only. Currently 4 firms have this status.	✓			
<u>Recommendation:</u> Conduct site visits for all NRI/FSDs.	Continuation of existing practice. All NRI/FSDs are visited.	✓			
<u>Recommendation:</u> Conduct site visit for all forest conservation plan exemptions.	All exemptions from submitting a forest conservation plan are not yet reviewed with a site visit. This is due to the fact that we have just recently completed the hiring process for new reviewers and have reorganized the review staff into geographic teams. This should allow for adequate staff to handle all cases and conduct site visits. In the interim, we have done periodic spots checks of exemptions requests.		✓		
<u>Recommendation:</u> Environmental Planning will conduct a weekly triage of new submissions to determine the order of review.	Triage of plan reviews is occurring and all review staff (including new hires) is being trained in how to conduct triage.	✓			
<u>Recommendation:</u> Planning Director will officially designate to the Forest	Pending development and approval of new Enforcement Regulations that are being developed by M-NCPPC Legal Staff.			✓	

MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
Conservation Inspectors the authority to issue stop work orders.					
<u>Recommendation:</u> Develop an effective education campaign to educate the public on forest conservation and forest conservation easements.	Staff is working with the M-NCPPC Community Outreach Division to better educate the public. Last spring a 10 minute segment was produced for Montgomery Plans and repeated daily on Cable Montgomery for 6 weeks. M-NCPPC staff worked with the League of Women Voters to organize and implement a major education forum on the Forest Conservation Law in January. Other outreach programs are forthcoming, including a revamped website.		✓		
<u>Recommendation:</u> Create an electronic tracking system for all violations that clearly indicates the type of violation and notifies the inspectors on milestones particular to that violation.	A great deal of information has been gathered on the history of how violations have been handled. Based on this information, staff is working with M-NCPPC Information and Technology Department to develop a system that will allow violation cases to be more effectively tracked by inspectors.		✓		
<u>Recommendation:</u> Develop standard notes, details, and information to be incorporated onto all forest conservation plans and upload the information on the M-NCPPC homepage, or on a new website dedicated to forest conservation issues in Montgomery County.	Staff does have standard notes and details developed. We are now working with M-NCPPC Community Outreach staff to provide more information on the website including copies of approved plans, standard notes and details, native trees, and conservation easement documents.		✓		
<u>Recommendation:</u> Authorize additional people the ability to sign final forest conservation plans.	The Planning Director determines who is designated to sign final forest conservation plan. Policy is for final plans to be signed by a supervisor. New Forest Conservation Program Manager position has been created and filled at a supervisory level so that this person can sign all plans.	✓			
<u>Recommendation:</u> Increase staffing for the program by	In the past year M-NCPPC has hired a new Forest Conservation Program Manager, 4 new reviewers, filled 2		✓		

MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
strongly supporting the 2 additional plan reviewers and 2 additional forest conservation inspectors that are currently recommended in the FY08 Departmental budget.	vacant forest conservation inspectors, and hired one new inspector. The lead inspector position is open and advertised. In addition, we have worked to train the new staff and have reorganized the review team into geographic areas for greater effectiveness.				
<u>Recommendation:</u> Update the Trees Technical Manual.	This work cannot proceed until the forest conservation law and forest conservation regulations are amended. Additionally, the Forest Conservation Program Manager, who is responsible for this activity, is working on revising the forest conservation law, developing staff review manual and procedures, public education and outreach, violations, and training new staff.				✓
<u>Recommendation:</u> Prepare procedural manuals documenting how staff should review and approve NRI/FSDs, Tree Save Plans, Forest Conservation Plans, and Enforcement.	Procedural manual is currently being developed for enforcement activities. Procedures are developed for the review and notification for forest conservation plans.		✓		
<u>Recommendation:</u> Prepare procedural manuals for determining and documenting if forest conservation violation occurred, and for assessing penalties for these violations, including establishing guidelines for corrective actions.	Currently under development		✓		
<u>Recommendation:</u> Identify public and private lands for reforestation.	Staff has identified and planting is occurring on a public site in the Patuxent watershed. Other planting locations have been identified for future plantings. Staff has connected MCPS with private property owners for banking possibilities. Identification of other public lands and		✓		

MNCPPC Task Force Recommendation	Action	Implemented	Under Development	Pending action by others	Not Started
	private lands are an essential component of the Green Infrastructure Plan.				
<u>Recommendation:</u> Digitize all forest conservation plans and make them available online.	Process is ongoing. New plans are electronically captured. Older plans are being systematically captured and available for public viewing online. Consultant assistance is being utilized.		✓		
<u>Recommendation:</u> Educate project managers in County agencies on plan submission requirements.	Staff has met with MCPS and the Parks Department project managers. Staff previously requested a meeting with DPWT which still remains to be scheduled.		✓		



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Item # 5
Supplemental Information
January 10, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mary Dolan, Acting Chief
Countywide Planning

FROM: Mark Pfefferle, Forest Conservation
Program Manager
Countywide Planning *MP*

DATE: January 7, 2008

SUBJECT: Discussion of Bill 37-07 on Forest Conservation – Amendments
Supplemental Information



BACKGROUND

On January 4, 2008, staff provided the Board with a summary highlighting the changes to the Forest Conservation Law, Bill 37-07, introduced by Councilmember Elrich. This memo provides greater detail on a line-by-line analysis of the changes. This supplemental memorandum was identified in the January 4, 2008 staff report. In addition, the Parks Department has provided a separate memorandum identifying their concerns with the amendments proposed by the Councilmember. The Parks Department memorandum is attached.

Issues

1. The Board transmitted its recommended changes to the County Council on September 28, 2007. The first 68 pages of Bill 37-07 reflects the Boards' recommended changes, however, Council staff made changes that does not accurately reflect the forwarded changes. For example, in Section 22A-4, the Board's recommended changes identify the requirements for the Level 1, 2 and 3 reviews. Council staff inadvertently deleted this section. It was not intentional. Staff will continue to review the first 68 pages of Bill 37-07 to determine if there were other inadvertent changes to the Board's recommendations as part of the formal comments to be sent to the County Council.

2. Starting on page circle 69, line 1, the Councilmember proposes to amend Section 8-25 of the County Code by prohibiting the Department of Permitting Services (DPS) from issuing a building permit for any structure on a property that was in violation of Chapter 22A for five years. The Councilmember introduced a similar bill in June 2007, Bill 14-07. Bill 14-07 would have permanently prevented DPS from issuing a building permit. Staff still has a number of concerns with this amendment to Section 8-25 of the County Code, including:
 - a. Section 8-25 only applies to the clearing of forest, when there are other unauthorized activities on a property that can occur but not have the same consequences. For example, a person could disturb 5,000 square feet of land, forested or unforested, and still be allowed to receive a building permit.
 - b. The five-year prohibition applies to the property and not the individual. If a person clears land onto an adjoining property, the proposed language would prohibit the property owner from obtaining a building permit even though someone trespassed onto the property. This is of concern to the Parks Department, where encroachments to M-NCPPC occurs. In this instance, the Parks Department is not in violation of Chapter 22A, but they would be prohibited from obtaining a building permit for five years because someone else encroached onto Park property.
 - c. There is no relationship to the type or extent of the violation. Based on the proposed language, a violation of placing play equipment in a forest conservation easement or unauthorized clearing of forest have the same consequence. What if an equipment operator inadvertently exceeds an unforested limits of disturbance for an approved subdivision plan, or on a single recorded lot? Would the developer be prohibited from obtaining a building permit for the subdivision for five years? Would the homeowner be prohibited from expanding, reconstructing, or building a new home on a recorded lot? Based on the proposed language, yes they all would be prohibited from receiving future building permits.
3. Circle 69, line 16. Staff has no concern with adding "with a goal of no forest net loss" other than rephrasing it as "with a goal of no net loss of forest".
4. Circle 69, line 20. The Councilmember's amendment for the definition "Afforestation threshold" is exactly the same as the Board's. No comment from staff.
5. Circle 70, line 26. The Councilmember's amendment changes an "and" to an "or" in the definition of "Agricultural activity". The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article.
6. Circle 70, line 29. New definition for "Champion Class Tree" which "means the largest tree of its species and all know trees of the same species within 10% of the point value of the existing Champion tree." Staff opposes this change for individual trees should be in a Tree Ordinance.
7. Circle 70, line 32. The Councilmember's amendment revises the definition of "Champion Tree" and refers to the "Board's Champion Tree Register as maintained by the Forest Conservation Program Coordinator". The Forest Conservation Program Coordinator is the former County Arborist identified in Chapter 22A. It is unclear which Board is referred to in

this definition (Planning Board vs. Forest Conservancy District Board). The definition infers that the Forest Conservation Program Coordinator maintains the register, which contradicts a State requirement the Forest Conservancy District identifies champion trees and maintains the register. Staff opposes the Councilmember's recommended change.

8. Circle 70, line 37. The Councilmember's amendment deletes "or timber harvesting" from the "commercial logging" in the definition section. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the definition in Chapter 22A of the County code. "Commercial logging" and "timber harvesting" are frequently viewed as synonymous terms.
9. Circle 70, line 44. The Councilmember's amendment adds "additional forest clearing" and deletes "requiring a Forest Conservation Plan" from the definition. Staff agrees with this proposed change.
10. Circle 71, line 49. The Councilmember's amendment deletes the definition "Development Project Completion". Staff recommends the term not be deleted from the forest conservation law. This term is necessary for it is a key as to when planting, when required, must occur; otherwise the project is in violation.
11. Circle 71, line 59. The Councilmember's amendment proposes to modify the definition of "Environmental buffer" by adding "strip of land generally contiguous with and parallel to any body of water" and delete "stream buffer" and "hydraulically connected". Environmental Planning staff objects to the inclusion of this phrase and the deletion of "stream buffer" and "hydraulically connected" from the definition. The term "environmental buffer" is to be all inclusive by incorporating stream buffers, wetlands and wetland buffers, and floodplains into one term. The *Environmental Guidelines for Development in Montgomery County* are very specific on the width of stream buffers but does not mention "environmental buffers". Hydraulically connected is also important for proposed definition appears to include "steep slopes" and "erodible soils" regardless of location in the environmental buffer.
12. Circle 71, line 67. The Councilmember's amendment proposes to include "regardless of political or property boundaries" into the definition of forest. Staff does not oppose the inclusion of this phrase since staff recognizes a forest without consideration to property lines.
13. Circle 72, line 80. The Councilmember's amendment proposes to modify the "Forest conservation threshold" definition by deleting the reference to the penalty when forest above the forest conservation threshold is removed and then how it changes when forest is removed below the conservation threshold. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the current definition in Chapter 22A of the County code.
14. Circle 72, Line 83. The Councilmember is proposing to add a new definition for "Government Entity". Staff does not believe this is necessary since the Board's definition of

"Person" includes all levels of government. In addition, it appears that the term "Government Entity" is only used in the definition of "net tract area".

15. Circle 72, Line 87. The Councilmember is proposing to modify the definition of "High-density residential" for the purposes of calculating forest conservation requirements from an area zoned for densities greater than 1 dwelling unit per 40,000 square feet to 10 dwelling units per acre. Staff opposes the Councilmember's recommended change.
16. Circle 72, Line 92. The Councilmember is proposing to eliminate the definition "Institutional development". Elimination of this definition will make all "Institutional developments" comply with the requirements of the underlying zone. On July 31, 2007, the County Council voted to expand the definition of "Institutional development" with Bill 15-07. This bill incorporated religious institutions into the "Institutional development" land use category. Churches were previously required to comply with the requirements of the underlying zone. If adopted, religious institutions, libraries, fire stations, and parks will have to comply with the requirements of the underlying zone. Staff does not support the removal of the institutional land use category.
17. Circle 73, Line 99. The Councilmember is proposing a new definition for "Low density residential". Staff opposes the Councilmember's recommended change.
18. Circle 73, Line 104. The Councilmember is proposing to modify the definition of "Medium density residential" for the purposes of calculating forest conservation requirements from an area zoned for a density greater than one dwelling unit per 5 acres and less than or equal to one dwelling unit per 40,000 square feet to one dwelling unit per acre to less than or equal to 10 dwelling units per acre. Staff opposes the Councilmember's recommended change.
19. Circle 73, Line 111. The Councilmember is proposing to modify the definition of net tract area by reducing the net tract area for a property subject a forest conservation plan by deleting "any previously approved Forest Conservation Plan, any forest conservation or scenic easement with a government entity". Reducing the tract area for a property that is covered by a scenic easement may be problematic if the scenic easement includes the protection of forests. The scenic easement is usually less restrictive than a category I conservation easement. A typical scenic easement usually places restrictions on trees 6 inches and greater and some scenic easements allow for the construction of residences and septic areas. Staff believes that a typical category I conservation easement will safeguard the long-term protection of a forest better than a scenic easement. Staff does not believe a net tract area of a property should be reduced by acreage in a previously approved Forest Conservation Plan. In some instances, it is necessary to amend an approved plan for redevelopment, or expansion of the existing plan. Staff opposes the Councilmember's recommended change.
20. Circle 74, line 122. The Councilmember is proposing to change "municipal corporation" to "municipality". Staff does not oppose this change.
21. Circle 74, line 129. The Councilmember is proposing to remove "any other entity" in the "person" definition. Staff objects to this change. The phrase "any other entity" will catch all

entities not listed is items (1), (2), and (3) of the person definition. For example a non-governmental entity (NGO) may not fall into items (1), (2), or (3) but would be captured by (4). Staff opposes the Councilmember's recommended change.

22. Circle 74, line 130. The Councilmember is proposing a new definition "Priority planting area". This means environmental buffer areas, connections between existing forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. Staff does not oppose the Councilmember's recommended change.
23. Circle 74, line 139. The Councilmember proposes to change "Municipal Corporation" to "municipality". No comment from staff.
24. Circle 74, line 140. The Councilmember is proposing a new definition "Specimen tree". This means a tree as specified in the Forest Conservation Regulations. No comment from staff.
25. Circle 75, line 142. The Councilmember is proposing to delete the definition "Stream buffer". Staff objects to this deletion as outlined in number 10 above.
26. Circle 75, line 145. Amendment changes the minimum size of timber harvesting from one or more acres to 10,000 square feet or more. The reduction in threshold is inconsistent with the Maryland Forest Conservation Act. The change would make it so that timber harvesting operations between 10,000 square feet and one acre, which may not be subject to state timber removal permits still subject to a DPS sediment control permit. Under this change potentially more timber harvesting operations would now need to submit a forest conservation plan. Staff opposes the Councilmember's recommended change.
27. Circle 75, line 151. Add the word "Licensed" to the "Tree Expert". Staff does not object to this change.
28. Circle 75, line 154. New definition for "Wetland". It has always been staff's intent to define "stream buffers", "wetlands", and "wetland buffers" in a revised Forest Conservation Regulation. Staff still believes a wetland definition should appear in the regulation and not the law.
29. Circle 76, line 166. Changes the minimum lot size from "40,000" square feet to "10,000" square feet. Staff opposes the Councilmember's recommended change.
30. Circle 76, line 170. Requires any person that would cut, clear or any land disturbing activity that would threaten the viability of a champion class tree to be subject to a level 1 review. This entire provision is more appropriate for a Tree Ordinance and not the Forest Conservation Law.
31. Circle 76, line 172. Reduces the tract area of mandatory referral that is subject to the forest conservation law from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.

32. Circle 76, line 174. Removes the section that requires highway construction not excluded under subsections (c) or (d). Removing this section will potentially allow for the private construction of roadways in existing public rights of way from subject to a forest conservation plan. Staff opposes the Councilmember's recommended change.
33. Circle 76, line 177. Reduces the tract area for public and private utilities to a cumulative impact area from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
34. Circle 76, line 179. Requires any person, regardless of property size, to be subject to a Level 1 review if any forest in an environmental buffer or any forest in a special protection area in a special protection area is removed. This could include lots that are not subject to sediment control permit because they are disturbing less than 5,000 square feet of land. The Board's position is that should only apply to single lots greater than 40,000 square feet and not all properties regardless of size. Staff opposes the Councilmember's recommended change.
35. Circle 76, line 181; Circle 78, line 224; and Circle 80, line 274. A new provision that requires any person that proposes to cut, clear, or grading of any trees or forest subject to an approved Forest Conservation Plan to be subject to Level 1, Level 2 and Level 3 reviews in addition to the already approved forest conservation plan. Potentially the property would be subject to two forest conservation plans. This would provision would also apply to a conservation easement or scenic easement with a government entity. Easements with other agencies may allow for the removal of trees of certain diameter but under this provision, they would now be required to submit for a level 1 review even though the easement that the person is subject to permits the removal of trees. Staff opposes the Councilmember's recommended change.
36. Circle 76, line 187. Reduces the minimum existing single-lot size for a level 2 review from 40,000 square feet to 10,000. According to annual estimates from DPS approximately 166 more properties will be subject to the forest conservation law. Staff opposes the Councilmember's recommended change.
37. Circle 77, line 192. Reduces the maximum amount of forest which can be removed for level 2 reviews from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
38. Circle 77, line 194. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
39. Circle 77, line 197. Prohibits a single lot greater than 10,000 square feet from a level 2 review if any specimen tree or champion tree is disturbed wherever located. This will require any person who cuts critical root zones for a tree in a public right-of-way or in an adjoining property be subject to a level 1 review. Staff opposes the Councilmember's recommended change.

40. Circle 77, line 209. Changes the maximum amount of forest which can be removed for a minor subdivision level 2 review from 40,000 square feet to 5,000 square feet. Staff opposes the Councilmember's recommended change.
41. Circle 77, line 211. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
42. Circle 79, line 241. Changes an "and" to an "or" between "commercial logging" and "timber harvesting". Change is acceptable to staff.
43. Circle 79, line 247. Changes the County "Arborist" to the County "Forest Conservation Coordinator". No comment.
44. Circle 79, line 255. Changes an "and" to an "or" between "commercial logging" and "timber harvesting". Change is acceptable to staff.
45. Circle 80, line 279. Reduces the minimum amount of forest which County Highway Project can remove before being subject to a forest conservation plan from 40,000 square feet to 10,000 square feet. Staff does not oppose this change.
46. Circle 80, line 282. The Councilmember proposes a new section for County School Projects. Under the proposal, schools would only be required to prepare a forest conservation plan if more than 10,000 square feet of forest is removed and the replacement would be 1:1. Staff does not believe this meets the intent of the Maryland Forest Conservation Act. Under the Maryland Forest Conservation Act, public schools are an "institutional land use" and therefore have reforestation and afforestation requirements based on a percentage of the net tract area. The Councilmember's amendment in Bill 37-07 is less strict than what is currently required in Chapter 22A of the Code and the Maryland Forest Conservation Act, for there is no afforestation requirements and removal of forest below a certain percentage is "penalized" at a rate less than 2:1 for which all plans must comply with. Staff opposes the Councilmember's recommended change.
47. Circle 81, line 300. This proposal would only permit the Planning Director to waive the necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for staff does not allow persons to submit less than is required for a property, or area to be developed. When staff does not require all the information for an entire property it is for a forest stand that will not be impacted by the development. Staff opposes the Councilmember's recommended change.
48. Circle 81, line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties. Staff does not oppose this requirement.

49. Circle 82, line 315. The proposal allows for tree inventories to be signed by a certified arborist, licensed tree expert and a qualified professional. Staff does not oppose this provision provided it does not extend to preparation of tree protection plans.
50. Circle 82, line 324. This addition is similar to comment 46 above which would only allow the Planning Director to waive components necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for the reasons stated in 46 above.
51. Circle 82, line 326. The proposal allows for tree inventories to be recertified by an arborist, licensed tree expert and a qualified professional. Staff is okay with this provision provided it does not extend to preparation of tree protection plans.
52. Circle 82, line 327. Adds "licensed" before "Tree Expert". Staff does not oppose this change.
53. Circle 82, line 331. This proposal allows for tree protection plans to be prepared by Qualified Professionals. Qualified Professionals include landscape architects, foresters, and people that have take a MD DNR course. None of these professionals are trained to neither assess a trees health nor develop adequate programs to protect those trees. Staff opposes the Councilmember's changes to this section.
54. Circle 83, line 343. The Councilmember's proposal changes an "and" to an "or". This change makes the requirement less onerous than the Board's proposal. Under the Boards' proposal is a person is in violation of Declaration of Intent, the person must submit for a Level 1 Review and pay a penalty. The Councilmember's proposal makes noncompliance with a Declaration of Intent either a Level 1 Review or and penalty. Staff opposes the Councilmember's recommended change.
55. Circle 83, line 344. The Councilmember proposes to change the penalty amount from one "established by fee schedules approved by Council resolution... but no less than the minimum set by state law" to a penalty fee "per square foot or forest cut or cleared". Council resolutions are established on a square foot basis and therefore there is no reason to change the language. The Board's proposed language is clearer for it clearly sets what the penalty limits. Staff opposes the Councilmember's recommended change.
56. Circle 83, line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes

the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.

57. Circle 84, line 361. The Councilmember includes a provision that allows for NRI/FSDs approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section only if the revoking of an approved NRI/FSD is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness. This section may be problematic when a person/organization that does not favor a development uses this section to delay Board action on a plan. Interestingly, this section is only applicable to plans in the development review process and does not include all plans reviewed for forest conservation.
58. Circle 84, line 366. The Councilmember's proposal includes the words "Tree Inventory" at the beginning of the section. Staff does not oppose the inclusion of the phrase.
59. Circle 84, lines 375. The Councilmember includes a provision that allows for tree inventories approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section if the revoking of an approved tree inventory is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness.
60. Circle 84, lines 379 to 391. This section was inadvertently omitted from the Board's recommendations to the Council. Staff does not oppose the inclusion of this section, but staff does oppose the line that states "an incomplete or inaccurate application must be denied" on line 396. See comment 55 above.
61. Circle 84, line 401. The Councilmember proposes to remove "to the maximum extent feasible" from this section. By removing this phrase, forest in environmentally sensitive areas could be removed because there is no longer the requirement that "to the maximum extent feasible, retain certain vegetation and specific areas in an undisturbed condition". Staff opposes the Councilmember's recommended change.
62. Circle 86, line 412. In this section the Councilmember ranks the order of preference for which forest must be mitigated so that "on site landscaping with an approved plan" has a higher ranking than "forest mitigation banks" and "in-lieu fees". Development projects that require landscape plans are either a requirement of the type of plan (site plan) or a specific requirement of the Planning Board on a preliminary plan. Staff opposes the Councilmember's recommended change for it will continue the practice in which an applicant can count landscaping credit twice. Once to meet the landscape requirement of a site plan and secondly to meet the forest conservation requirements.

63. Circle 86, line 417 table. The Councilmember proposal includes a new land use type called "Low Density Residential" which will have a 40% conservation threshold and a 20% afforestation threshold and a "Highway Right-of-Ways and School Sites" land type. The Councilmember also proposes to remove "Institutional Development Areas" from the table and make all institutional development comply with the underlying zone. Staff opposes the Councilmember's recommended change.
64. Circle 87, line 427. As previously mentioned in comment 62 above, staff opposes the separation of county schools from other "institutional uses".
65. Circle 87, line 439. The Councilmember proposes to increase the "penalty" for forested cleared above the conservation threshold from "1/4" acre to "1/2" acre. This will change the breakeven point, the point at which a person is required to replant and potentially result in more forest planting than currently exists on a tract. Staff opposes the Councilmember's recommended change.
66. Circle 88, lines 452 and 457. The Councilmember's proposal removes a duplication that was in the Boards' recommended changes to the Council. Staff is not opposed to this change.
67. Circle 89, line 468. The Councilmember proposes to increase the amount of forest that must be protected in an offsite mitigation bank if existing forest is used to meet the planting requirements. Currently, for every 1 acre of credit needed 2 acres of existing forested is required. The proposal is to increase this rate to 4 acres of existing forest. The proposal does not change the 1:1 requirement for planted forests in mitigation banks. Under the current law and Boards' proposal, a 20 acre existing forest mitigation bank has 10 acres of credit for sale. The Councilmember's proposal would change this to 5 acres of credit for sale. Staff does not support this change because forest mitigation banks will be quickly exhausted, potentially slowing development when banks are unavailable.
68. Circle 89, line 470. The amendment proposes a new section related to non-native and invasive management control. That is, for each acre of planting the applicant can offset the requirement by controlling non-native and invasive materials with supplemental planting for 2 acres of land. The Maryland Forest Conservation Law does not have such a provisions and it is unknown at this time if the State Department of Natural Resources would accept such provisions in lieu of creating new forests. The State is currently assessing non-native and invasive management control and the possibility of crediting such controls to meet planting requirements but it is still months or years away from providing such guidance. While staff recognizes the serious problem of controlling non-native and invasive materials, it is not clear that this kind of a trade off is appropriate and would be equivalent to planting new forest areas. We suggest further study of this issue.
69. Circle 89, line 478. The Councilmember proposes to delete "as practical" from the long-term protection section. This change means that watering of newly planted trees must occur. In some instances it is not practical to water particularly when a stream crossing is necessary; therefore, Staff opposes the Councilmember's recommended change.

70. Circle 90, line 489. The Councilmember proposes to add "or Tree Protection Plan" under the forfeiture section. Staff does not oppose this change.
71. Circle 90, line 497. The Councilmember proposes to replace "unplanted" with "on open land" in the banking section. Staff does not oppose this change.
72. Circle 90, lines 501 to 505. The Councilmember proposes to reduce the size of a planted forest conservation bank from 1 acre to 10,000 square feet. This is the minimum forest size. Staff opposes the Councilmember's recommended change for it may lead to many small and distinct forest conservation easements on individual lots.
73. Circle 91, lines 519 to 525. The proposal places a requirement that forest mitigation banks must be approved within 45 days or they are deemed approved. This timeline is not within the control of any one agency. Forest mitigation banks are not required to submit a Natural Resource Inventory/Forest Stand Delineation and therefore not all baseline information is known with the initial submission, requiring additional field work. Proposed forest mitigation banks may have conflicting easements which prohibit the forest that is already paid to be protected by State funds to be used for forest mitigation banks. Forest mitigation banks that are created outside the development process require conservation easements be established and recorded in the Land Records. Only upon the signature of the grantee, the M-NCPPC Executive Director, can an easement be recorded. Anywhere along the process the bank can be delayed. The bank may meet the technical definitions of planning staff but may not satisfy the contractual requirements established by others within M-NCPPC. Forest mitigation banks created as part of development plan will take more than 45 days from the date of submission of a preliminary plan to the issuance of a Planning Board opinion and approval of a record plat. Staff does not support a timeline for bank approvals.
74. Circle 91, lines 529. The Councilmember's amendment would also prohibit the Montgomery County Public Schools and Montgomery County Department of Public Works and Transportation from creating forest mitigation banks for their own use on land owned by Montgomery County. It would also prevent the Parks Department from creating a forest mitigation bank on park property for their exclusive use. For these reasons, staff does not support this change.
75. Circle 92, lines 545 to 550. The Councilmember's amendment requires adjoining and confronting property owners to be notified 10 days in advance of any clearing or grading occurring on a property subject to a forest conservation plan. There are inherent difficulties in enforcing whether or not timely notice was provided. Staff is concerned that the only permit that needs to be noticed is not the primary plan (building permit) or secondary plan (sediment control permit), but the tertiary forest conservation plan. There are no mandates or proposals requiring applicants to notify adjoining and confronting property owners that a building permit, or sediment and erosion control plan, was submitted for review by DPS and that construction of a new residence or expansion of an existing building is imminent. Staff recommends posting of properties for the above-noted permits be considered as an alternative to posting for forest conservation

76. Circle 92, line 557. The Councilmember proposes that "Planning Director may initiate administrative" enforcement actions, while in the Boards recommended changes "enforcement action are to be initiated by the Planning Director". The sentence appears to limit Planning Director's enforcement ability to administrative enforcement actions only. Staff does not support the Councilmember's proposed changes.
77. Circle 93, lines 568 to 590. The proposed amendment adds a fourth separate and distinct enforcement action. This enforcement action is in addition to the M-NCPPC's ability to: issue citations; issue Administrative Orders; and apply Civil Administrative Penalties. This fourth method ignores the current method of enforcement by allowing it to take place concurrently with M-NCPPC's enforcement and allows a private action to be filed in Court before our investigation is complete. The Councilmember initially introduced this amendment as part of Bill 14-07 in June 2007. Staff's concerns remain the same, which include:
- a. There is no provision explaining whether the Court's decision trumps the Planning Board's or vice versa. In addition, M-NCPPC will no longer be the sole enforcer of the Forest Conservation Law. Every adjacent and confronting property owner has the same enforcement authority as the Planning Department, although through the Courts.
 - b. The definition of "aggrieved party" is very broad and, if used at all, should be limited to parties materially damaged by the clearing.
 - c. The proposed amendment allows an "aggrieved person" to challenge the factual basis of any order or decision by the Director. This provision would potentially discourage "aggrieved persons" from working with staff and would encourage them to bypass staff and take their alleged "materially false, misleading, inaccurate, or incomplete information" to Court.
 - d. With respect to relief sought by the aggrieved person, the proposed Bill allows for the award of "damages to any person entitled to them by law", however it is unclear if the aggrieved person could seek damages against M-NCPPC if the person is successful in Court.
78. Circle 94, line 594. The Councilmember's proposal capitalizes "forest conservation fund". Staff does not oppose this change.
79. Circle 94, line 600. The Councilmember includes tree inventories as a type of plan that can be appealed to the Planning Board. Staff does not oppose this change.
80. Circle 94, line 603. The Councilmember proposes a new section that requires public notification when an applicant applies for a variance from the Forest Conservation Law. The new provision would require an applicant to post the property for 20 days according to the Departments regulations. It is unclear which "Department" is referred to this section. There is no similar requirement for waivers from the stormwater management requirements but the Board of Appeals has a posting requirement. M-NCPPC has never received a

variance request, this additional requirement seems unnecessary. Staff does not oppose the change.

81. Circle 95, line 609. This line changes the "County Arborist" to the "County Forest Conservation Coordinator". Staff does not oppose this change.
82. Circle 95, line 615. The Councilmember proposes a new section that requires the Planning Board to accept public comment prior to hearing a variance request. Staff does not believe this is necessary since a variance request must be referred to other agencies and the Maryland Department of Natural Resources before processing the request. Since no variance requests were ever submitted to M-NCPPC the requirement to review public comments seems unnecessary.
83. Circle 96, line 650. The Councilmember proposes that all in-lieu fees must be spent on afforestation or reforestation after 2 years and if any money remains it must be used for street trees and forest mitigation banks. Staff opposes the Councilmember's recommended changes. While it is worthwhile goal to use all monies within a two year time frame, sometimes it is impractical. Prolonged periods of drought are not good planting times. It would be unwise to plant trees knowing that the survivability is poor because of the soil moisture conditions. Fee-in-lieu funds are also being leveraged as the local government's share for tree planting grants. Without these funds potential grants may be lost and less forest planted.
84. Circle 97, line 661. This change indicates that money collected for noncompliance with Tree Protection Plans in addition to Forest Conservation Plans must be deposited in the Forest Conservation Fund. The change adds tree protections plans to this section. Staff does not oppose this change.
85. Circle 97, lines 667 to 696. The Planning Board recommended deleting the County Arborist section from the Forest Conservation. No other location in the law is an individual and responsibilities identified. The position was initially located in the Forest Conservation Law because it was a new position and this would enable easier funding of the position. The position is currently funded and staffed and therefore the initial goal was accomplished. Staff opposes the Councilmember's recommended changes; however staff would not object the position being defined in the definitions section of the law in the similar amount of details such as the Planning Director.
86. Circle 98, lines 697 to 699. The Planning Board was silent on an effective date for the forest conservation amendments. The Councilmember is proposing an effective date of June 30, 2008 so that any Development Plan filed by June 30, 2008 would not be subject to the amendments. This will result some complexities. Development plans that are heard before the Board on the same day after July 1, 2008 may have different sets of rules based on the date submitted. Also, if a project adds additional net land to the net tract area after the submission of a development plan would the entire development plan be subject to the old laws, or just that portion that was filed prior to June 30, 2008.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Mark Pfefferle, Forest Conservation
Program Manager
Countywide Planning

DATE: January 17, 2008

SUBJECT: Discussion of Bill 37-07 on Forest Conservation – Amendments
Supplemental Information.

BACKGROUND

On December 11, 2007, the Montgomery County Council introduced the Planning Board's amendments to the Forest Conservation Law, Bill 37-07. At the same time Councilmember Elrich introduced 86 additional amendments to the Forest Conservation Law. Staff previously submitted a memo to the Board indicating, line-by-line, the proposed amendments by the Councilmember. This memo further categorizes the amendments into categories. Some of the amendments fit into numerous categories.

AMENDMENTS TO IMPROVE OR CLARIFY LANGUAGE THAT STAFF DOES NOT OBJECT

1. Line 16. Staff has no concern with adding "with a goal of no forest net loss" other than rephrasing it as "with a goal of no net loss of forest".
2. Line 20. The Councilmember's amendment for the definition "Afforestation threshold" is exactly the same as the Board's.
3. Line 44. The Councilmember's amendment adds "additional forest clearing" and deletes "requiring a Forest Conservation Plan" from the definition.
4. Line 67. The Councilmember's amendment proposes to include "regardless of political or property boundaries" into the definition of forest. Staff does not oppose the inclusion of this phrase since staff recognizes a forest without consideration to property lines.
5. Line 122. The Councilmember is proposing to change "municipal corporation" to "municipality".

6. Line 129. The Councilmember is proposing to remove "any other entity" in the "person" definition. Staff objects to this change. The phrase "any other entity" will catch all entities not listed in items (1), (2), and (3) of the person definition. For example a non-governmental entity (NGO) may not fall into items (1), (2), or (3) but would be captured by (4).
7. Line 130. The Councilmember is proposing a new definition "Priority planting area". This means environmental buffer areas, connections between existing forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers.
8. Line 139. The Councilmember proposes to change "Municipal Corporation" to "municipality".
9. Line 151. Add the word "Licensed" to the "Tree Expert".
10. Line 241. Changes an "and" to an "or" between "commercial logging" and "timber harvesting".
11. Line 247. Changes the County "Arborist" to the County "Forest Conservation Coordinator".
12. Line 255. Changes an "and" to an "or" between "commercial logging" and "timber harvesting".
13. Line 279. Reduces the minimum amount of forest which County Highway Project can remove before being subject to a forest conservation plan from 40,000 square feet to 10,000 square feet.
14. Line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties.
15. Line 315. The proposal allows for tree inventories to be signed by a certified arborist, licensed tree expert and a qualified professional. Staff does not oppose this provision provided it does not extend to preparation of tree protection plans.
16. Line 326. The proposal allows for tree inventories to be recertified by an arborist, licensed tree expert and a qualified professional. Staff does not oppose this provision provided it does not extend to preparation of tree protection plans.
17. Line 327. Adds "licensed" before "Tree Expert".
18. Line 366. The Councilmember's proposal includes the words "Tree Inventory" at the beginning of the section.
19. Lines 452 and 457. The Councilmember's proposal removes a duplication that was in the Boards' recommended changes to the Council.

20. Line 489. The Councilmember proposes to add "or Tree Protection Plan" under the forfeiture section.
21. Line 497. The Councilmember proposes to replace "unplanted" with "on open land" in the banking section.
22. Line 594. The Councilmember's proposal capitalizes "forest conservation fund".
23. Line 600. The Councilmember includes tree inventories as a type of plan that can be appealed to the Planning Board.
24. Line 603. The Councilmember proposes a new section that requires public notification when an applicant applies for a variance from the Forest Conservation Law. The new provision would require an applicant to post the property for 20 days according to the Departments regulations. It is unclear which "Department" is referred to this section. There is no similar requirement for waivers from the stormwater management requirements but the Board of Appeals has a posting requirement. M-NCPPC has never received a variance request, this additional requirement seems unnecessary. Staff does not oppose the change, however, it does seem unwarranted.
25. Line 609. This Line changes the "County Arborist" to the "County Forest Conservation Coordinator".
26. Line 661. This change indicates that money collected for noncompliance with Tree Protection Plans in addition to Forest Conservation Plans must be deposited in the Forest Conservation Fund. The change adds tree protections plans to this section.
27. Lines 697 to 699. The Planning Board was silent on an effective date for the forest conservation amendments. The Councilmember is proposing an effective date of June 30, 2008 so that any Development Plan filed by June 30, 2008 would not be subject to the amendments. This will result some complexities. Development plans that are heard before the Board on the same day after July 1, 2008 may have different sets of rules based on the date submitted. Also, if a project adds additional net land to the net tract area after the submission of a development plan would the entire development plan be subject to the old laws, or just that portion that was filed prior to June 30, 2008.

AMENDMENTS THAT WEAKEN THE FOREST CONSERVATION LAW

28. Line 111. The Councilmember is proposing to modify the definition of net tract area by reducing the net tract area for a property subject a forest conservation plan by deleting "any previously approved Forest Conservation Plan, any forest conservation or scenic easement with a government entity". Reducing the tract area for a property that is covered by a scenic easement may be problematic if the scenic easement includes the protection of forests. The scenic easement is usually less restrictive than a category I conservation easement. A typical scenic easement usually places restrictions on trees 6 inches and greater and some scenic easements allow for the construction of residences and septic areas. Staff believes that a typical category I conservation easement will safeguard the long-term protection of a forest

better than a scenic easement. Staff does not believe a net tract area of a property should be reduced by acreage in a previously approved Forest Conservation Plan. In some instances, it is necessary to amend an approved plan for redevelopment, or expansion of the existing plan. Staff opposes the Councilmember's recommended change.

29. Line 174. Removes the section that requires highway construction not excluded under subsections (c) or (d). Removing this section will potentially allow for the private construction of roadways in existing public rights-of-way from being subject to a forest conservation plan. Staff opposes the Councilmember's recommended change.
30. Line 282. The Councilmember proposes a new section for County School Projects. Under the proposal, schools would only be required to prepare a forest conservation plan if more than 10,000 square feet of forest is removed and the replacement would be 1:1. Staff does not believe this meets the intent of the Maryland Forest Conservation Act. Under the Maryland Forest Conservation Act, public schools are an "institutional land use" and therefore have reforestation and afforestation requirements based on a percentage of the net tract area. The Councilmember's amendment in Bill 37-07 is less strict than what is currently required in Chapter 22A of the Code and the Maryland Forest Conservation Act, for there is no afforestation requirements and removal of forest below a certain percentage is "penalized" at a rate less than 2:1 for which all plans must comply with. Staff opposes the Councilmember's recommended change.
31. Line 331. This proposal allows for tree protection plans to be prepared by Qualified Professionals. Qualified Professionals include landscape architects, foresters, and people that have take a MD DNR course. None of these professionals are trained to neither assess a trees health nor develop adequate programs to protect those trees. Staff opposes the Councilmember's changes to this section.
32. Line 343. The Councilmember's proposal changes an "and" to an "or". This change makes the requirement less onerous than the Board's proposal. Under the Boards' proposal is a person is in violation of Declaration of Intent, the person must submit for a Level 1 Review and pay a penalty. The Councilmember's proposal makes noncompliance with a Declaration of Intent either a Level 1 Review or and penalty. Staff opposes the Councilmember's recommended change.
33. Line 401. The Councilmember proposes to remove "to the maximum extent feasible" from this section. By removing this phrase, forest in environmentally sensitive areas could be removed because there is no longer the requirement that "to the maximum extent feasible, retain certain vegetation and specific areas in an undisturbed condition". Staff opposes the Councilmember's recommended change.
34. Line 412. In this section the Councilmember ranks the order of preference for which forest must be mitigated so that "on site landscaping with an approved plan" has a higher ranking than "forest mitigation banks" and "in-lieu fees". Development projects that require landscape plans are either a requirement of the type of plan (site plan) or a specific requirement of the Planning Board on a preliminary plan. Staff opposes the Councilmember's recommended change for it will continue the practice in which an

applicant can count landscaping credit twice. Once to meet the landscape requirement of a site plan and secondly to meet the forest conservation requirements.

35. Line 427. As previously mentioned, staff opposes the separation of county schools from other "institutional uses".
36. Line 557. The Councilmember proposes that "Planning Director may initiate administrative" enforcement actions, while in the Boards recommended changes "enforcement action are to be initiated by the Planning Director". The sentence appears to limit the Planning Director's enforcement ability to administrative enforcement actions only. Staff does not support the Councilmember's proposed changes.
37. Lines 568 to 590. The proposed amendment adds a fourth separate and distinct enforcement action. This enforcement action is in addition to the M-NCPPC's ability to: issue citations; issue Administrative Orders; and apply Civil Administrative Penalties. This fourth method ignores the current method of enforcement by allowing it to take place concurrently with M-NCPPC's enforcement and allows a private action to be filed in Court before our investigation is complete. The Councilmember initially introduced this amendment as part of Bill 14-07 in June 2007. Staff's concerns remain the same, which include:
 - a. There is no provision explaining whether the Court's decision trumps the Planning Board's or vice versa. In addition, M-NCPPC will no longer be the sole enforcer of the Forest Conservation Law. Every adjacent and confronting property owner has the same enforcement authority as the Planning Department, although through the Courts.
 - b. The definition of "aggrieved party" is very broad and, if used at all, should be limited to parties materially damaged by the clearing.
 - c. The proposed amendment allows an "aggrieved person" to challenge the factual basis of any order or decision by the Director. This provision would potentially discourage "aggrieved persons" from working with staff and would encourage them to bypass staff and take their alleged "materially false, misleading, inaccurate, or incomplete information" to Court.
 - d. With respect to relief sought by the aggrieved person, the proposed Bill allows for the award of "damages to any person entitled to them by law", however it is unclear if the aggrieved person could seek damages against M-NCPPC if the person is successful in Court.

AMENDMENTS THAT ARE EXCESSIVE OR UNREASONABLE

38. Line 1, the Councilmember proposes to amend Section 8-25 of the County Code by prohibiting the Department of Permitting Services (DPS) from issuing a building permit for any structure on a property that was in violation of Chapter 22A for five years. The Councilmember introduced a similar bill in June 2007, Bill 14-07. Bill 14-07 would have

permanently prevented DPS from issuing a building permit. Staff still has a number of concerns with this amendment to Section 8-25 of the County Code, including:

- a. Section 8-25 only applies to the clearing of forest, when there are other unauthorized activities on a property that can occur but not have the same consequences. For example, a person could disturb 5,000 square feet of land, forested or unforested, and still be allowed to receive a building permit.
- b. The five-year prohibition applies to the property and not the individual. If a person clears land onto an adjoining property, the proposed language would prohibit the property owner from obtaining a building permit even though someone trespassed onto the property. This is of concern to the Parks Department, where encroachments to M-NCPPC occurs. In this instance, the Parks Department is not in violation of Chapter 22A, but they would be prohibited from obtaining a building permit for five years because someone else encroached onto Park property.
- c. There is no relationship to the type or extent of the violation. Based on the proposed language, a violation of placing play equipment in a forest conservation easement or unauthorized clearing of forest have the same consequence. What if an equipment operator inadvertently exceeds an unforested limit of disturbance for an approved subdivision plan, or on a single recorded lot? Would the developer be prohibited from obtaining a building permit for the subdivision for five years? Would the homeowner be prohibited from expanding, reconstructing, or building a new home on a recorded lot? Based on the proposed language, yes they all would be prohibited from receiving future building permits.

39. Line 49. The Councilmember's amendment deletes the definition "Development Project Completion". Staff recommends the term not be deleted from the forest conservation law. This term is necessary for it is a key as to when planting, when required, must occur; otherwise the project is in violation.

40. Line 59. The Councilmember's amendment proposes to modify the definition of "Environmental buffer" by adding "strip of land generally contiguous with and parallel to any body of water" and delete "stream buffer" and "hydraulically connected". Environmental Planning staff objects to the inclusion of this phrase and the deletion of "stream buffer" and "hydraulically connected" from the definition. The term "environmental buffer" is to be all inclusive by incorporating stream buffers, wetlands and wetland buffers, and floodplains into one term. The *Environmental Guidelines for Development in Montgomery County* are very specific on the width of stream buffers but does not mention "environmental buffers". Hydraulically connected is also important for proposed definition appears to include "steep slopes" and "erodible soils" regardless of location in the environmental buffer.

41. Line 87. The Councilmember is proposing to modify the definition of "High-density residential" for the purposes of calculating forest conservation requirements from an area zoned for densities greater than 1 dwelling unit per 40,000 square feet to 10 dwelling units per acre. Staff opposes the Councilmember's recommended change.

42. Line 92. The Councilmember is proposing to eliminate the definition "Institutional development". Elimination of this definition will make all "Institutional developments"

comply with the requirements of the underlying zone. On July 31, 2007, the County Council voted to expand the definition of "Institutional development" with Bill 15-07. This bill incorporated religious institutions into the "Institutional development" land use category. Churches were previously required to comply with the requirements of the underlying zone. If adopted, religious institutions, libraries, fire stations, and parks will have to comply with the requirements of the underlying zone. Staff does not support the removal of the institutional land use category.

43. Line 140. The Councilmember is proposing a new definition "Specimen tree". This means a tree as specified in the Forest Conservation Regulations. No comment from staff.
44. Line 142. The Councilmember is proposing to delete the definition "Stream buffer". Staff objects to this deletion as outlined in number 10 above.
45. Line 154. New definition for "Wetland". It has always been staff's intent to define "stream buffers", "wetlands", and "wetland buffers" in a revised Forest Conservation Regulation. Staff still believes a wetland definition should appear in the regulation and not the law.
46. Line 166. Changes the minimum lot size from "40,000" square feet to "10,000" square feet. Staff opposes the Councilmember's recommended change.
47. Line 172. Reduces the tract area of mandatory referral that is subject to the forest conservation law from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
48. Line 177. Reduces the tract area for public and private utilities to a cumulative impact area from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
49. Line 179. Requires any person, regardless of property size, to be subject to a Level 1 review if any forest in an environmental buffer or any forest in a special protection area in a special protection area is removed. This could include lots that are not subject to sediment control permit because they are disturbing less than 5,000 square feet of land. The Board's position is that should only apply to single lots greater than 40,000 square feet and not all properties regardless of size. Staff opposes the Councilmember's recommended change.
50. Line 181; Line 224; and Line 274. A new provision that requires any person that proposes to cut, clear, or grading of any trees or forest subject to an approved Forest Conservation Plan to be subject to Level 1, Level 2 and Level 3 reviews in addition to the already approved forest conservation plan. Potentially the property would be subject to two forest conservation plans. This would provision would also apply to a conservation easement or scenic easement with a government entity. Easements with other agencies may allow for the removal of trees of certain diameter but under this provision, they would now be required to submit for a level 1 review even though the easement that the person is subject to permits the removal of trees. Staff opposes the Councilmember's recommended change.

51. Line 187. Reduces the minimum existing single-lot size for a level 2 review from 40,000 square feet to 10,000. According to annual estimates from DPS approximately 166 more properties will be subject to the forest conservation law. Staff opposes the Councilmember's recommended change.
52. Line 192. Reduces the maximum amount of forest which can be removed for level 2 reviews from 40,000 square feet to 10,000 square feet. Staff opposes the Councilmember's recommended change.
53. Line 194. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
54. Line 197. Prohibits a single lot greater than 10,000 square feet from a level 2 review if any specimen tree or champion tree is disturbed wherever located. This will require any person who cuts critical root zones for a tree in a public right-of-way or in an adjoining property be subject to a level 1 review. Staff opposes the Councilmember's recommended change.
55. Line 209. Changes the maximum amount of forest which can be removed for a minor subdivision level 2 review from 40,000 square feet to 5,000 square feet. Staff opposes the Councilmember's recommended change.
56. Line 211. Removes reference to removal of any forest in an environmental buffer or located in a special protection area which must submit a water quality plan. See comment 33 above.
57. Line 300. This proposal would only permit the Planning Director to waive the necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for staff does not allow persons to submit less than is required for a property, or area to be developed. When staff does not require all the information for an entire property it is for a forest stand that will not be impacted by the development. Staff opposes the Councilmember's recommended change.
58. Line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties. Staff does not oppose this requirement.
59. Line 344. The Councilmember proposes to change the penalty amount from one "established by fee schedules approved by Council resolution... but no less than the minimum set by state law" to a penalty fee "per square foot or forest cut or cleared". Council resolutions are established on a square foot basis and therefore there is no reason to change the language. The Board's proposed language is clearer for it clearly sets what the penalty limits. Staff opposes the Councilmember's recommended change.
60. Line 439. The Councilmember proposes to increase the "penalty" for forested cleared above the conservation threshold from "1/4" acre to "1/2" acre. This will change the breakeven point, the point at which a person is required to replant and potentially result in more forest

planting than currently exists on a tract. Staff opposes the Councilmember's recommended change.

61. Line 468. The Councilmember proposes to increase the amount of forest that must be protected in an offsite mitigation bank if existing forest is used to meet the planting requirements. Currently, for every 1 acre of credit needed 2 acres of existing forested is required. The proposal is to increase this rate to 4 acres of existing forest. The proposal does not change the 1:1 requirement for planted forests in mitigation banks. Under the current law and Boards' proposal, a 20 acre existing forest mitigation bank has 10 acres of credit for sale. The Councilmember's proposal would change this to 5 acres of credit for sale. Staff does not support this change because forest mitigation banks will be quickly exhausted, potentially slowing development when banks are unavailable.
62. Line 529. The Councilmember's amendment would also prohibit the Montgomery County Public Schools and Montgomery County Department of Public Works and Transportation from creating forest mitigation banks for their own use on land owned by Montgomery County. It would also prevent the Parks Department from creating a forest mitigation bank on park property for their exclusive use. For these reasons, staff does not support this change.

AMENDMENTS THAT ARE MORE APPROPRIATE FOR A TREE ORDINANCE

63. Line 29. New definition for "Champion Class Tree" which "means the largest tree of its species and all know trees of the same species within 10% of the point value of the,existing Champion tree." Staff opposes this change for individual trees should be in a Tree Ordinance.
64. Line 170. Requires any person that would cut, clear or any land disturbing activity that would threaten the viability of a champion class tree to be subject to a level 1 review. This entire provision is more appropriate for a Tree Ordinance and not the Forest Conservation Law.
65. Line 306. Changes an "or" to an "and", which would now require tree protective measures within forest conservation plans to protect trees on the subject site and on adjoining properties. Staff does not oppose this requirement.

AMENDMENTS THAT ARE IMPRATICAL AND COSTLY OR RESULT IN OUTCOMES CONTRARY TO THE INTENT OF THE LAW

66. Line 49. The Councilmember's amendment deletes the definition "Development Project Completion". Staff recommends the term not be deleted from the forest conservation law. This term is necessary for it is a key as to when planting, when required, must occur; otherwise the project is in violation.
67. Line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be

denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.

68. Line 361. The Councilmember includes a provision that allows for NRI/FSDs approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section only if the revoking of an approved NRI/FSD is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness. This section may be problematic when a person/organization that does not favor a development uses this section to delay Board action on a plan. Interestingly, this section is only applicable to plans in the development review process and does not include all plans reviewed for forest conservation.
69. Line 478. The Councilmember proposes to delete "as practical" from the long-term protection section. This change means that watering of newly planted trees must occur. In some instances it is not practical to water particularly when a stream crossing is necessary; therefore, Staff opposes the Councilmember's recommended change.
70. Lines 519 to 525. The proposal places a requirement that forest mitigation banks must be approved within 45 days or they are deemed approved. This timeline is not within the control of any one agency. Forest mitigation banks are not required to submit a Natural Resource Inventory/Forest Stand Delineation and therefore not all baseline information is known with the initial submission, requiring additional field work. Proposed forest mitigation banks may have conflicting easements which prohibit the forest that is already paid to be protected by State funds to be used for forest mitigation banks. Forest mitigation banks that are created outside the development process require conservation easements be established and recorded in the Land Records. Only upon the signature of the grantee, the M-NCPPC Executive Director, can an easement be recorded. Anywhere along the process the bank can be delayed. The bank may meet the technical definitions of planning staff but may not satisfy the contractual requirements established by others within M-NCPPC. Forest mitigation banks created as part of development plan will take more than 45 days from the date of submission of a preliminary plan to the issuance of a Planning Board opinion and approval of a record plat. Staff does not support a timeline for bank approvals.

71. Lines 545 to 550. The Councilmember's amendment requires adjoining and confronting property owners to be notified 10 days in advance of any clearing or grading occurring on a property subject to a forest conservation plan. There are inherent difficulties in enforcing whether or not timely notice was provided. Staff is concerned that the only permit that needs to be noticed is not the primary plan (building permit) or secondary plan (sediment control permit), but the tertiary forest conservation plan. There are no mandates or proposals requiring applicants to notify adjoining and confronting property owners that a building permit, or sediment and erosion control plan, was submitted for review by DPS and that construction of a new residence or expansion of an existing building is imminent. Staff recommends posting of properties for the above-noted permits be considered as an alternative to posting for forest conservation
72. Line 650. The Councilmember proposes that all in-lieu fees must be spent on afforestation or reforestation after 2 years and if any money remains it must be used for street trees and forest mitigation banks. Staff opposes the Councilmember's recommended changes. While it is worthwhile goal to use all monies within a two year time frame, sometimes it is impractical. Prolonged periods of drought are not good planting times. It would be unwise to plant trees knowing that the survivability is poor because of the soil moisture conditions. Fee-in-lieu funds are also being leveraged as the local government's share for tree planting grants. Without these funds potential grants may be lost and less forest planted.

AMENDMENTS CONTRARY TO STATE LAW

73. Line 32. The Councilmember's amendment revises the definition of "Champion Tree" and refers to the "Board's Champion Tree Register as maintained by the Forest Conservation Program Coordinator". The Forest Conservation Program Coordinator is the former County Arborist identified in Chapter 22A. It is unclear which Board is referred to in this definition (Planning Board vs. Forest Conservancy District Board). The definition infers that the Forest Conservation Program Coordinator maintains the register, which contradicts a State requirement the Forest Conservancy District identifies champion trees and maintains the register. Staff opposes the Councilmember's recommended change.
74. Line 80. The Councilmember's amendment proposes to modify the "Forest conservation threshold" definition by deleting the reference to the penalty when forest above the forest conservation threshold is removed and then how it changes when forest is removed below the conservation threshold. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the current definition in Chapter 22A of the County code.
75. Line 99. The Councilmember is proposing a new definition for "Low density residential". Staff opposes the Councilmember's recommended change.
76. Line 104. The Councilmember is proposing to modify the definition of "Medium density residential" for the purposes of calculating forest conservation requirements from an area zoned for a density greater than one dwelling unit per 5 acres and less than or equal to one

dwelling unit per 40,000 square feet to one dwelling unit per acre to less than or equal to 10 dwelling units per acre. Staff opposes the Councilmember's recommended change.

77. Line 145. Amendment changes the minimum size of timber harvesting from one or more acres to 10,000 square feet or more. The reduction in threshold is inconsistent with the Maryland Forest Conservation Act. The change would make it so that timber harvesting operations between 10,000 square feet and one acre, which may not be subject to state timber removal permits still subject to a DPS sediment control permit. Under this change potentially more timber harvesting operations would now need to submit a forest conservation plan. Staff opposes the Councilmember's recommended change.
78. Line 417 table. The Councilmember proposal includes a new land use type called "Low Density Residential" which will have a 40% conservation threshold and a 20% afforestation threshold and a "Highway Right-of-Ways and School Sites" land type. The Councilmember also proposes to remove "Institutional Development Areas" from the table and make all institutional development comply with the underlying zone. Staff opposes the Councilmember's recommended change.
79. Lines 568 to 590. The proposed amendment adds a fourth separate and distinct enforcement action. This enforcement action is in addition to the M-NCPPC's ability to: issue citations; issue Administrative Orders; and apply Civil Administrative Penalties. This fourth method ignores the current method of enforcement by allowing it to take place concurrently with M-NCPPC's enforcement and allows a private action to be filed in Court before our investigation is complete. The Councilmember initially introduced this amendment as part of Bill 14-07 in June 2007. Staff's concerns remain the same, which include:
- a. There is no provision explaining whether the Court's decision trumps the Planning Board's or vice versa. In addition, M-NCPPC will no longer be the sole enforcer of the Forest Conservation Law. Every adjacent and confronting property owner has the same enforcement authority as the Planning Department, although through the Courts.
 - b. The definition of "aggrieved party" is very broad and, if used at all, should be limited to parties materially damaged by the clearing.
 - c. The proposed amendment allows an "aggrieved person" to challenge the factual basis of any order or decision by the Director. This provision would potentially discourage "aggrieved persons" from working with staff and would encourage them to bypass staff and take their alleged "materially false, misleading, inaccurate, or incomplete information" to Court.
 - d. With respect to relief sought by the aggrieved person, the proposed Bill allows for the award of "damages to any person entitled to them by law", however it is unclear if the aggrieved person could seek damages against M-NCPPC if the person is successful in Court.

AMENDMENTS THAT CHANGE AN IMPORTANT MEANING

80. Line 26. The Councilmember's amendment changes an "and" to an "or" in the definition of "Agricultural activity". The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article.
81. Line 37. The Councilmember's amendment deletes "or timber harvesting" from the "commercial logging" in the definition section. The language used in the Board's proposed amendments maintains the definition in the Forest Conservation Law and is identical to the language found in Title 08, Subtitle 19, Chapter 03 of the Natural Resources Article. Staff recommends maintaining the definition in Chapter 22A of the County code. "Commercial logging" and "timber harvesting" are frequently viewed as synonymous terms.

AMENDMENTS THAT ARE PROBABLY LEGAL, BUT AWKWARD OR BURDENSOME TO ADMINISTER AND ENFORCE

82. Line 282. The Councilmember proposes a new section for County School Projects. Under the proposal, schools would only be required to prepare a forest conservation plan if more than 10,000 square feet of forest is removed and the replacement would be 1:1. Staff does not believe this meets the intent of the Maryland Forest Conservation Act. Under the Maryland Forest Conservation Act, public schools are an "institutional land use" and therefore have reforestation and afforestation requirements based on a percentage of the net tract area. The Councilmember's amendment in Bill 37-07 is less strict than what is currently required in Chapter 22A of the Code and the Maryland Forest Conservation Act, for there is no afforestation requirements and removal of forest below a certain percentage is "penalized" at a rate less than 2:1 for which all plans must comply with. Staff opposes the Councilmember's recommended change.
83. Line 324. This addition is similar to comment 46 above which would only allow the Planning Director to waive components necessary requirements for a Natural Resource Inventory/Forest Stand Delineation only after the County's Forest Conservation Coordinator concurs. Staff does not believe this is necessary for the reasons stated in 46 above.
84. Line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error

such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.

85. Line 615. The Councilmember proposes a new section that requires the Planning Board to accept public comment prior to hearing a variance request. Staff does not believe this is necessary since a variance request must be referred to other agencies and the Maryland Department of Natural Resources before processing the request. Since no variance requests were ever submitted to M-NCPPC the requirement to review public comments seems unnecessary.

OTHER AMENDMENTS

86. Line 83. The Councilmember is proposing to add a new definition for "Government Entity". Staff does not believe this is necessary since the Board's definition of "Person" includes all levels of government. In addition, it appears that the term "Government Entity" is only used in the definition of "net tract area".
87. Line 154. New definition for "Wetland". It has always been staff's intent to define "stream buffers", "wetlands", and "wetland buffers" in a revised Forest Conservation Regulation. Staff still believes a wetland definition should appear in the regulation and not the law.
88. Line 326. The proposal allows for tree inventories to be recertified by an arborist, licensed tree expert and a qualified professional. Staff is okay with this provision provided it does not extend to preparation of tree protection plans.
89. Line 357. The Councilmember proposes to make all NRI/FSD that are incomplete or inaccurate are denied. The Board's proposal was just for incomplete applications to be denied. The Councilmember appears to add "or inaccurate" from the Development Review Manual. Page 10 of this manual states "The Planning Director must reject a final application after it has been accepted if the Planning Director finds that it contains materially inaccurate or incomplete information." The context in the Development Manual is different than a NRI/FSD. In the development manual a final application is rejected and returned to the applicant but based on the Councilmember's proposal an inaccurate application must be denied. The NRI/FSD must include information for the subject property and a pre-determined distance around the circumference of the property. If an adjoining property is unwilling to allow an applicant's representative to enter their property to determine tree sizes the sizes may be estimated. Since the estimates may continue inaccurate information, based on the information submitted it must be denied. Two other problems arise. First, an error such as mislabeling a tree size, or incorrectly identifying a tree could result in an application from being denied even though the location of all necessary trees are correctly shown. Staff opposes the Councilmember's recommended change.
90. Line 361. The Councilmember includes a provision that allows for NRI/FSDs approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section only if the revoking of an approved NRI/FSD is done by the Planning

Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness. This section may be problematic when a person/organization that does not favor a development uses this section to delay Board action on a plan. Interestingly, this section is only applicable to plans in the development review process and does not include all plans reviewed for forest conservation.

91. Line 375. The Councilmember includes a provision that allows for tree inventories approved by the Planning Director, or designee to be "revoked at any time during the development review process if false or misleading information was relied on the NRI/FSD approval." Staff does not oppose this section if the revoking of an approved tree inventory is done by the Planning Director and that the Council provides sufficient staff to adequately assess submissions for completeness and accurateness.
92. Line 379 to 391. This section was inadvertently omitted from the Board's recommendations to the Council. Staff does not oppose the inclusion of this section, but staff does oppose the Line that states "an incomplete or inaccurate application must be denied" on Line 396. See comment 55 above.
93. Line 470. The amendment proposes a new section related to non-native and invasive management control. That is, for each acre of planting the applicant can offset the requirement by controlling non-native and invasive materials with supplemental planting for 2 acres of land. The Maryland Forest Conservation Law does not have such a provisions and it is unknown at this time if the State Department of Natural Resources would accept such provisions in lieu of creating new forests. The State is currently assessing non-native and invasive management control and the possibility of crediting such controls to meet planting requirements but it is still months or years away from providing such guidance. While staff recognizes the serious problem of controlling non-native and invasive materials, it is not clear that this kind of a trade off is appropriate and would be equivalent to planting new forest areas. We suggest further study of this issue.
94. Lines 501 to 505. The Councilmember proposes to reduce the size of a planted forest conservation bank from 1 acre to 10,000 square feet. This is the minimum forest size. Staff opposes the Councilmember's recommended change for it may lead to many small and distinct forest conservation easements on individual lots.
95. Lines 667 to 696. The Planning Board recommended deleting the County Arborist section from the Forest Conservation. No other location in the law is an individual and responsibilities identified. The position was initially located in the Forest Conservation Law because it was a new position and this would enable easier funding of the position. The position is currently funded and staffed and therefore the initial goal was accomplished. Staff opposes the Councilmember's recommended changes; however staff would not object the position being defined in the definitions section of the law in the similar amount of details such as the Planning Director.

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February 13, 2008

The Honorable Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Email and Fax-240-777-7989

Re: Written Testimony, For the Record – Proposed Changes to the Forest Conservation Law
Bill 37-07, Public Hearing – January 22, 2008

Dear President Knapp:

I am submitting my detailed comments and review for the public record concerning the Public Hearing held January 22, 2008 regarding the proposed changes to the Forest Conservation Law. I have taken a great deal of time based on my 34 years of experience as a regulator and as a consultant, to prepare these comments and recommendations. I personally have established permanent Forest Conservation Easements on over 520 acres here in Montgomery County over the last 15 years, while assisting rural landowners to improve and preserve their farms.

For your information, most of these comments were submitted to the Planning Board when they were accepting comments for their Public Hearing June 21, 2007. The Planning Board final version of the proposed changes to this important law incorporated few if any of the valuable comments submitted by public agencies, citizens, and private and public organizations.

I appreciate the opportunity to prepare these detailed recommendations concerning the Board's proposed changes to the Forest Conservation Law. I hope you can support many of these proposed changes.

Sincerely,

Vincent H. Berg

Vincent H. Berg, P.E.

Introduction

February 13, 2008

The Chesapeake Bay Executive Council executed Directive 06-01, on September 22, 2006 and their Response to Directive 06-01 that was executed December 5, 2007, concerning "Protecting the Forests of the Chesapeake Bay". The need to be proactive in providing stewardship of public and private forestlands is required to sustain the many benefits of the Bay's forestlands and the protection that forestlands provide to the Bay and its many tributaries. The Chesapeake 2000 Agreement commits to the permanent protection of existing forest along streams and rivers of the Bay. The Directive 06-01, further states that business partners and others shall be partnered to support the retention, expansion and stewardship of forestlands. Private forestland is subject to conversion to other land uses. The Bay Watershed permanently loses 100 acres (1980's) to 400 acres (2000) of forest, every day. In Montgomery County our forest loss in the 1980's and 1990's has been about ½ acre per day or over 150 acres per year on average.

Montgomery County has the lowest per capita forest acres in the State of Maryland (0.1 acres per person, "The State of the Chesapeake Forests", 2006) based on 2000 data. It is estimated that 44 percent of Montgomery County has been utilized for urban growth. If all trends continue, forest fragmentation and forest loss will lead to a large patchwork of small forest fragments resulting in wide spread establishment of invasive plant species and degraded forest habitat. Montgomery County's Forest Conservation Program needs to also protect existing forestlands and include a program to economically encourage private forest landowners to not sell for development while allowing forest landowners to continue scientific based sustainable management of their forests for timber use and other forest products.

There is a need to find a balance between forest conservation in urban areas and the need to concentrate growth in urban corridors and reduce developments from sprawling throughout the County. Higher densities in urban areas are preferable to development of large lot residential (0.5 acre to 5 acre) projects. The intense utilization of urban lands for development will help preserve large contiguous blocks of existing forestlands and agricultural lands.

The following are my specific recommendations and proposed changes to the Montgomery County Forest Conservation Law:

Suggested Changes to Forest Conservation Program

by: Vincent H. Berg, P.E.

February 13, 2008

Using the January 22, 2008 Public Hearing Package

Change Section 22A-2 Findings and Purpose

The goal of the Forest Conservation Law is the preservation, conservation, protection and restoration of forest in Montgomery County. This law was not created to be used as a "Tree Protection Law" nor are individual trees to be given protection under the State Forest Conservation Law. The County's Forest Conservation Law should only be used for the preservation, conservation, protection and restoration of forest in Montgomery County.

Add new Section 22A-2(b)(7), Findings and purpose

To develop a program of scientific based sustainable forest management for the public and private forests of the County.

Add Section 22A-3, Definitions, Changes and Modifications

The definition of **Agricultural Activity** needs to be added and will include 'land clearing' for agricultural purposes (crop fields, pasture, paddocks, agricultural buildings, etc.), plowing, construction of agricultural buildings (including tenant homes) and all other agricultural activities.

Change, Section 22A-3, Definitions, Changes and Modifications

Forest should be defined as an area at least 35 feet wide, as in State Law.

Add, Section 22A-3, Definitions, Changes and Modifications

Forest Mitigation Banking shall only be allowed to occur on private lands, public lands shall not be used for forest mitigation bank sites.

Add to Section 22A-3, Definitions, Changes and Modifications

Net Tract Area shall be defined to not include Forest Bank Areas.

Add to Section 22A-3, Definitions, Changes and Modifications

Net Tract Area for agriculture and resource areas net tract area shall only be that portion of agricultural land being changed to residential use (i.e. 25 acre lot development with a 2-acre home development area shall be considered 2-acres net tract area for calculation purposes). The net tract area shall be no greater than the "limits of disturbance" as shown on the development or sediment control plan.

Add to Section 22A-3, Definitions, Changes and Modifications

Qualified Professional, and any Maryland State licensed forester or arborist. Also review the **Tree Expert** definition this may not be the level of professionalism needed.

Add, Section 22A-3, Definitions, Changes and Modifications

Technical Manual shall mean the Maryland State Forestry Manual unless the Planning Board adopts by regulation its own Technical Manual.

Add, Section 22A-3, Definitions, Changes and Modifications

Timber Harvesting shall mean the cutting of trees on one acre or greater and/ or the excavation or grading of 10,000 square feet of forest area.

Add, Section 22A-3, Definitions, Changes and Modifications

Tract shall exclude Forest Bank Areas and existing Public Roads and Right of Ways.

Add, Section 22A-3, Definitions, Changes and Modifications

Tree Survey a definition needs to be developed.

Add to Section 22A-4(1)(a), Persons Subject to the Forest Conservation Law

General. All agricultural activities including forest harvesting activities are exempt from submitting a Level 1, 2 or 3 Review.

Change Section 22A-4(1)(b)(5).

the person proposes County highway constructionLine 195.

Change Section 22A-4(1)(c)(4).

a ~~State or~~ County highway construction..... Line 232.

Change Section 22A-4(c)(4), Subject to Section 5-103

Those projects that are subject to Section 5-103 of MD Code shall provide the Planning Board with evidence of the project's conformance to Section 5-103 or shall conform to Chapter 22A.
After Line 234.

Delete Section 22A-4(c)(4)(d), Level 3 Review,

all references to agricultural activity, including lines 241 to 244 and (2) line 245, (4) line 248 to 256.

Change Section 22A-4(c)(2) and 22A-4(d), Non Applicable Situations

These sections shall be titled "Non-Applicable Situations" which will define those activities not subject to this Chapter, review by the agency or subject to an agency fee. Lines 213 to 234 and Lines 235 to 276.

Add new, Section 22A-5, Small Land Disturbing Activities

Applications for residential development that utilize the "Small Land Disturbing Sediment Control Form" shall be exempt from this Chapter's requirements. Line 277.

Change Section 22A-10(c)(2)(B), Approvals Required

The limit of time for the Declaration of Intent should remain 5 years. I do not believe any examples can be provided to justify increasing this requirement to 7 years. Line 698.

Add to Section 22A-11(a)(1), Review Procedures, Level 1 Review, NRI/FSD

The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. Line 719

Add to Section 22A-11(a)(2), Preliminary Forest Conservation Plan

Within 45 days after receiving the preliminary Forest Conservation Plan, the Planning Director must notify the applicant whether the Plan is complete and approved. If the applicant is not notified within 45 days, the Plan must be treated as approved. The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. After Line 726.

Change to Section 22A-11(a)(4)(B), Special exceptions

The Board of Appeals has final authority over Special Exception cases. The proposed language does not allow the Board of Appeals to change or modify the preliminary forest conservation plan. I propose that Lines 765 to 769 be changed. The Board of Appeals must review the preliminary forest conservation plan along with the special exception and may only modify the preliminary forest conservation plan if the special exception will be improved in the opinion of the Board of Appeals.

Change to Section 22A-11(a)(4)(D)(iii), Modification to An Approved Plan

Even very small modifications to approved plans require reapproval by the Planning Director (staff). I propose that Inspectors be allowed a small amount of authority. I propose that Lines 801 to 804 be changed. Any modification up to 1,000 square feet can be approved by the field inspector who shall document the change and provide a copy to the original approval authority. No single project can have more than 3 changes approved by the field inspector. Any other modifications must be approved by either the Planning Board or the Planning Director, whichever approved the Forest Conservation Plan.

Add to Section 22A-11(b), Level 2 Review

The Director may extend the deadline for an additional 15 days for extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. Lines 929 to 931.

Add to Section 22A-11 (c), Level 3 Review

The Director may extend the deadline for an additional 15 days for extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. Lines 938 to 939.

Add to Section 22A-12(a)(3), Retention, afforestation, and reforestation requirements for Level 1 Review, General

(3) on site non-native and invasive management control with supplemental planting shall be subject to a credit of 1 acre for every 4 acres of control and planting. Lines 951 to 952.

Add to Section 22A-12(a)(5), Retention, afforestation, and reforestation requirements for Level 1 Review, General

(5) in-lieu fee; the Agency accepting the in-lieu fee shall purchase or plant equivalent acres of forest mitigation within 3 years or those funds collected are subject to transfer to the MCDPW and T for use to plant roadside trees; and Line 954.

Add to Section 22A-12(b)(1), Table

The following is to be added at the end of Line 959. The Conservation Threshold and the Afforestation Threshold for Agricultural and Resource Areas shall only include that area being developed for residential use or the limit of disturbance whichever is greater. The large Conservation Threshold forces productive agricultural fields to be planted with trees and prevents large agricultural lots from being used for productive agriculture or equine operations.

Add new Section 22A-12(b)(3)(C), Afforestation, Agricultural Lands

In the past, staff has directed agricultural fields to be planted with trees. The location of residential units on agricultural lands should be prioritized so as to locate homes on non-tillable land or on forest land. It shall be a priority of the Planning Board that agricultural fields and tillable acres shall be the preferred land use and remain available for farming activity. After Line 1027.

Add to Section 22A-12(c)(1)(A), Priorities for reforestation and afforestation
Afforestation and reforestation is to be satisfied by any of the methods listed in Section 22A-12(a) (1) to (6). Lines 1040 to 1041.

Retain Section 22A-12 (c)(2)(B), Off-site afforestation and reforestation

There have been some proposals to increase the ratio of retained forest to a 4:1 ratio (4 acres of existing forest retained for each 1-acre of mitigation required). If this ratio were increased the private payments to farmers would need to be cut in half. Also the limited available off-site forest mitigation would be used up twice as fast as the current rate of use. Finally the State Forest Conservation Law directs the 2:1 ratio be used. For all of these reasons the ratio of 2:1 should be retained. Line 1072.

Change Section 22A-12(e)(1), Special provisions for minimum retention, reforestation and afforestation, General

In the fifth line the word must should be changed to shall. Line 1116.

Change Section 22A-12(e)(2), Special provisions for minimum retention, reforestation and afforestation

In the fourth line the word must should be changed to shall. Line 1122.

Add to Section 22A-12(e)(2)(A), Retention, reforestation and afforestation

The Conservation Threshold and the Afforestation Threshold for Agricultural and Resource Areas shall only include that area being developed for residential use or the limit of disturbance whichever is greater. After Line 1125.

Change Section 22A-12(e)(2)(C), Retention, reforestation and afforestation

Requiring that all existing forest be required to be retained on-site may not be in the best interest of the project or the proposed development density. The following wording should be changed for Lines 1137 to 1140, On a site covered by this subsection, if existing forest is less than the minimum required retention, then the majority of existing forest must be retained and on-site and off-site afforestation up to the minimum standard must be provided.

Change Section 22A-12(e)(2)(D), Retention, reforestation and afforestation

Requiring that all afforestation be required on-site may not be in the best interest of the project or the proposed development density. The following wording should be changed for Lines 1144 to 1146, If a site covered by this subsection is unforested, on-site and off-site afforestation must equal the applicable afforestation threshold, with a majority of afforestation being on-site.

Add new Section 22A-12(e)(2)(G), Retention, reforestation, and afforestation

Projects utilizing TDRs or including MPDU housing units or Work Force Housing units shall be exempt from the requirement of having on-site forest retention, reforestation and afforestation. After Line 1155.

Add to Section 22A-12(f)(1), In Lieu fee

After Line 1165, The applicant may bond or post a cash bond if the on-site or off-site reforestation or afforestation can not be provided prior to permit issuance. The applicable in-lieu fee, bond or cash bond must be provided to the Planning Board prior to issuance of appropriate permits. The on-site or off-site reforestation or afforestation must be provided within 120 days of completing the project or a request in writing to extend this time may be granted. Once the on-site or off-site reforestation or afforestation has been provided the bond or cash bond shall be returned within 30 days. If the on-site or off-site reforestation or afforestation is not provided then the fee in-lieu must be paid to the Planning Board.

Add new Section 22A-12(f)(3), In Lieu fee, After Line 1178.

The applicant shall have the right to utilize any method of on-site or off-site reforestation or afforestation requirement or mitigation as provided by this Chapter and shall not be required to pay a fee in-lieu to the Planning Board, unless it is the applicant's desire to pay the in-lieu fee to the Planning Board.

Add new Section 22A-12(f)(4), In Lieu fee, After Line 1178.

The Agency accepting the in-lieu fee shall purchase or plant equivalent acres of forest mitigation within 5 years or the funds collected are subject to transfer to the MCDPW and T for use to plant roadside trees. It is preferred by the Planning Board that off-site forest mitigation be purchased for the development or project rather than the payment of the in-lieu fee to the Planning Board. The applicant shall have the option of purchasing off-site mitigation credits or paying the in-lieu fee.

Change Section 22A-12(g)(1), Agreements and Long Term Protection

The current process of requiring two years of maintenance has not been demonstrated to be a problem. No known bonds have been used by the Planning Director to correct forest planting problems. There is no justification to extend this time to 5 years. Under current procedures the maintenance period is extended and the bond extended if there is a problem with the planting. Line 1182 should be changed to, include a two-year binding agreement for maintenance of Line 1185 and 1186 should be changed to, The 2-year period starts upon satisfactory final inspection of the

Change Section 22A-13, Forest mitigation banks

There is an inherent "Conflict of Interest" by having Planning Board staff reviewing and approving private forest mitigation bank sites. If forest mitigation bank sites are not approved by the Planning Director, this forces applicants to have to pay the in-lieu fee to the Planning Board. An independent agency (MCDEP) or consultant that does not have a "Conflict of Interest" in the review process must conduct the review and approval of forest mitigation bank sites. It is in the Planning Board's interest to not approve forest mitigation banks. This problem needs to be resolved. Change the review and approval procedure to have MCDEP or an independent consultant do the review and approval. Line 1237.

Add to Section 22A-13(e)(3), Forest mitigation banks

Within 45 days after receiving a Master Forest Conservation Bank Conservation Easement Agreement, the Planning Director must notify the applicant whether the Master Forest Conservation Bank Conservation Easement Agreement is complete and approvable. If the applicant is not notified within 45 days, the Master Forest Conservation Bank Conservation Easement Agreement must be treated as approvable. The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. After Line 1257.

Delays up six months have occurred in the past, resulting in many problems for applicants and for Planning Board staff.

Add to Section 22A-13(e)(3), Forest mitigation banks

Master Forest Conservation Bank Conservation Easement Agreement for forest mitigation bank sites will not require Executive Director's signature, only the Montgomery County Planning Director's signature. The requirement to have the Executive Director's signature adds a minimum of three months to the process. After Line 1257.

Add new Section 22A-13(e)(4), Forest mitigation banks

Within 45 days after receiving a Proposal or a Forest Conservation Plan for forest mitigation bank project, the Planning Director must notify the applicant whether the Proposal or Plan is complete and approved. If the applicant is not notified within 45 days, the Proposal or the Plan must be treated as approved. The Director may extend the deadline for an additional 15 days in extenuating circumstances, if written notice is provided to the applicant, prior to the end of the 30 days. After Line 1257. Delays of six months and more have occurred in the past, due to no time limits for staff review.

Change Section 22A-13(g), Forest mitigation banks

Credits may be debited from the forest mitigation bank once the financial security has been provided to the Planning Director. Delete Lines 1261 to 1266. Forest mitigation bank credits should be allowed to used once the forest mitigation bank has established financial security. It is not fair to hold forest mitigation banks to a different standard than development sites.

Add new Section 22A-13(i), Forest mitigation banks

Lands to be dedicated to the Parks Department or County through the development process shall not be allowed to be used for forest mitigation bank purposes. Existing public lands are never allowed to be used as a forest mitigation bank. After Line 1274.

Add new Section 22A-13(j), Forest mitigation banks

Planning Board staff respects the private property rights and the right of landowners to control who enters their property. Agricultural lands to be used for forest mitigation banks shall not be entered without approval of the landowner or the owner's representative. The landowner or his representative shall have the right to accompany the Planning Board staff during their inspection of agricultural lands. After Line 1274. This issue has been a problem in the past and has created resentment by private agricultural landowners towards the Park and Planning Commission.

Change Section 22A-15(e), Required scheduling of inspections for Forest Conservation and Tree Protection Plan

Requiring notification 7 days prior to an inspection is excessive and not productive. MCDPS requires 24 hours notice prior to inspections. I believe that a 2 day notice is adequate and beneficial to all concerned. Lines 1336 to 1338 should be changed to, Persons must notify the Planning Director 2 days prior to scheduling inspections under subsection (c).

New Section 22A-15(f), Field Inspection Adjustments

Field inspectors shall be allowed to make adjustments/changes to the approved plan for areas of 1,000 square feet or less. Several changes can occur on a single approved plan, but no more than 5,000 square feet of changes are allowed for plans greater than 2 acres and no more than 2,000 square feet of changes are allowed for plans less than 2 acres. This provides the field inspector with a small amount of flexibility. After Line 1338.

New Section 22A-15(g), Conservation Easement Inspections

Every forest conservation easement area shall be field inspected and a report prepared at least once every five years to determine the condition of the forest within the conservation easement area and to determine if any encroachments exist or if there are any violations of the conservation easement. Currently Planning Board staff has no information on forest conservation easement areas. It is important to begin a regular inspection program of the conservation easements located throughout the County. After Line 1338.

Retain Section 22A-19, Noncompliance with exemption conditions

Lines 1354 to 1362 should be retained to discourage violations of the logging exemption.

Retain Section 22A-31, Forest Conservation Advisory Committee

Lines 1615 to 1683 should be retain. The Forest Conservation Advisory Committee is an important committee to advise the Planning Board, Council and Executive on matters related to the Forest Conservation Law.

Add new Section 22A-32(a), Forest Stewardship of Public Lands

The Planning Board shall develop a series of Forest Stewardship Plans prepared by a Professional Forester so as to create a scientifically based sustainable forest system in Montgomery County. The forest stewardship plans shall be developed on all forestlands held in public ownership including parkland and County land in Montgomery County. The forest stewardship plans shall be developed to create sustainable forests that supports balanced wildlife habitat, protects all native and endangered species, protects water quality, creates passive recreational areas for hiking and hunting and fishing and bird watching and wise utilization of renewable resources and other goals as needed. The implementation of the Forest Stewardship Plans shall be the responsibility of the Planning Board and Montgomery County.
After Line 1683.

Add new Section 22A-32(b), Forest Stewardship of Private Lands

The management and stewardship of private forest created and retained within private forest conservation easement areas created as a result of the development processes shall be the responsibility of the private landowners subject to review by the Planning Board. Preparation of Forest Stewardship Plan by a Professional Forester for each forest conservation area shall be required to be prepared by the private landowners subject to review by the Planning Board. Timber harvesting, disease control, damaging insect control, noxious weed control, vermin control and invasive species control shall be part of the Forest Stewardship Plan and the implementation shall be the responsibility of the private landowners subject to review by the Planning Board. After Line 1683.

021320087

BILL 37-07

MF
CC
AM**Brogden, Karen**

From: Knapp's Office, Councilmember
Sent: Wednesday, January 23, 2008 11:57 AM
To: Montgomery County Council

032894

Subject: FW: Testimony on Forest Conservation Law Amendments and Resolution to Set Fees

-----Original Message-----

From: anneambler@comcast.net [mailto:anneambler@comcast.net]

Sent: Wednesday, January 23, 2008 11:46 AM

To: Knapp's Office, Councilmember; Praisner's Office, Councilmember; Andrews' Office, Councilmember; Berliner's Office, Councilmember; Elrich's Office, Councilmember; Ervin's Office, Councilmember

Subject: Testimony on Forest Conservation Law Amendments and Resolution to Set Fees

Good morning, Council President Knapp and Council Members:

Pasted below is my testimony for the hearing last night, which I had abbreviated for oral delivery. As the hearing demonstrated, this is a very complex document dealing with a very important subject, and must be carefully examined in order to prevent unintended consequences. It may be necessary to make some adjustments to ensure that farming is not disadvantaged, while at the same time ensuring proper incentives to buffer farmland streams and observe other best management practices relating to tree cover that, in the end, enhance the quality of farmland.

Sincerely,
 Anne Ambler



Montgomery County Group

**Testimony on Bill 37-07, Forest Conservation
 and on a Resolution to Set Certain Penalties and Fees
 Montgomery County Council
 January 22, 2008**

Good evening. I am Anne Ambler, speaking on behalf of the more than 6,000 members of the Sierra Club in Montgomery County.

Maryland's gross greenhouse gas emissions rose 30% from 1990 to 2005, exceeding the national rate—says the Maryland Commission on Climate Change's recently released Climate Action Plan. It projects a rise to 53% above 1990 levels by 2020—while Maryland, highly vulnerable to sea level rise, has pledged to drastically cut emissions. Forest loss exacerbates the problem.

As we Marylanders begin to understand the catastrophic effects for the Bay, our health, and global climate disruption of losing so many of our fragile planet's forests, we must redirect toward forest

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preservation and expansion incentives typically favoring development.

We commend the Planning Board for rendering our Forest Conservation Law at last more comprehensible and applaud their raising the conservation thresholds, adding 3 years to maintenance requirements, and extending the Declaration of Intent period by 2 years. However, we agree with Councilmember Elrich that the county's dramatic and continuing forest loss requires that we aim no lower than **no net loss** of forest. For this reason, the Sierra Club generally supports Councilmember Elrich's amendments.

The document is very long and hard to follow, with so much material bracketed for deletion and addition by both the Planning Board and Councilmember Elrich. I will comment on just a few elements and expect to follow and contribute to the deliberations.

1. Resolution setting amount of fee in lieu
2. Scope of coverage
3. Residential categories
4. Institutional privilege
5. Notice to neighbors and private right of action
6. Disappearance of citizen advisory committee and county arborist

1. We support the Elrich resolution to raise the fee in lieu of reforestation from 90 cents to \$2/sq.ft. Deer browse, invasive plants, and more frequent drought make establishment of new forest ever more difficult. A \$2 fee shifts the incentive back to preservation, a far more effective strategy. DEP's Forest Preservation Strategy Update credits the county's trees with about 430 million dollars' worth of storm water runoff mitigation annually, and 34 million dollars' worth of air pollution removal. At that rate, trees provide at least \$6 per sq. ft. of benefit over a 50-year lifetime, a value that will only rise. \$2 is not excessive. The fee for *afforestation* of land not currently forested could be set differently, perhaps based on the cost of planting and establishing new forest.

2. We support expanding the scope of coverage to properties smaller than 40,000 sq. ft. (see circle 76), but after much testing of scenarios, we believe that trees on a 10,000 sq.ft. property are better addressed through a tree ordinance that could require, for instance, 2 trees planted for every 1 removed. We would accept 20,000 sq. ft. for minimum coverage. The issue is single lots. The county's experience with single lots has shown that coverage at 40,000 sq. ft. and exemption from review of clearing up to 40,000 sq. ft. have not served the public interest. Therefore, while hedging on the 10,000 sq. feet, we heartily concur with the Elrich reduction from 40,000 to *5,000 sq. ft. of disturbance*-- in line with! sedimentation law—as the cut-off for forest clearing with only Level 2 review.

3. We support adding a Low Density Residential Category and redefining the others to reflect Montgomery County reality (circles 72,73,86). The existing "high density residential category," covering everything from half acre lots to apartment buildings, is laughable. As to consistency with state law, perhaps Maryland, pushed by the Climate Action Plan to "increase the scope and strength" of its admittedly ineffective Forest Conservation Law, will adopt our categories.

4. If we look at the issue from the perspective of what we wish to achieve, preservation of forests, it is clear that institutions should enjoy no special privilege to destroy them (circle 86). Many of the institutions that have raised concerns are in fact houses of worship, which of all institutions, have a mandate to care for creation. When the institutions are governmental, they should be leading by example. Questions of equity are resolved when all institutions abide by the rules applicable to everyone else.

5. Consistent with our previous testimony, we support notification of neighbors and a private right of action to permit aggrieved persons some possibility of relief in the event that administrative decisions have been based on false information. Frivolous lawsuits are extremely unlikely because of the significant expense in both money and time of going to court (circles 93,94).

6. We are concerned that the Forest Conservation Advisory Committee, so recently put into the law, has been deleted in the Planning Board's version (circle 63). County Executive Leggett has made nominations for this committee and our understanding is that confirmation has been delayed because he is seeking more representation from the farming community. Similarly, the County Arborist position has been deleted (circle 62). We support the Elrich amendment to create instead a County Forest Conservation Coordinator from the Department of Environmental Protection (circle 97). These two entities can be of great assistance to the county in managing forest conservation.

Our forests are increasingly critical as our population grows and we hit the limits of our local, national, and world environmental support system; they warrant strong protection. Governments have often condemned land to build such things as highways for the "public benefit." It is now time to treat forest protection as a *requirement* for the public benefit. In future, as the crisis deepens, condemning land for forest protection may even be necessary.

Finally, I must stress the importance of following this legislation with a tree ordinance that will cover smaller properties. We often see that after a developer has saved all the trees required by law, the subsequent homeowner cuts them down--unnoticed except by the distressed neighbors. The cumulative impact is devastating. We see the effects in our severely degraded streams, our dying Bay, and the quality of our air and of our lives. The time for strong legislative action is now.

Thank you for the opportunity to comment.



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Whittington DesignBuild

January 22, 2008

Mike Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 37-07 Forest Conservation Law Amendments

Dear President Knapp and Councilmembers:

The Maryland-National Capital Building Industry Association (MNCBIA) is hereby submitting comments on Bill 37-07, Forest Conservation Law Amendments. This testimony presents background information and clarifies the MNCBIA's position on the various aspects of this proposal.

As background, in June of 2006 the MNCPPC convened a Forest Conservation Taskforce, comprised of civic/environmental interests, builder interests and technical/legal interests. During the course of six (6) months this diverse group developed a consensus of recommendations to improve shortcomings in the Forest Conservation program. Throughout the course of this Taskforce's efforts, a key issue that was identified by residents and the regulated community alike was how the current law is unclear. Largely in response to this Taskforce's efforts, the MNCPPC began the process of amending the Forest Law. It was MNCBIA's understanding that the amendments that MNCPPC proposed would deal only with matters that clarify the law and make it easier for residents and the regulated community to understand.

However, the MNCPPC changes included amendments to the Law that go beyond 'clarification', including adjustments to the forest thresholds and the extension of maintenance/bonding periods, which would put additional constraints on housing and other infrastructure needs and costs. In response, the MNCBIA asked several questions to determine the basis of these additional amendments. The Planning Board staff responded that these amendments were in response to a recommendation by the C&O Canal Taskforce. Upon review, the MNCBIA learned that the C&O Canal Taskforce was formed in response to illegal forest clearing along the C&O Canal; the Taskforce was directed to "review measures necessary to protect and enhance the forested buffer along the Canal and the Potomac River." However, the recommendations proposed by the Canal Taskforce and incorporated within the MNCPPC recommended changes in Bill 37-07 1) would not have prevented the illegal clearing, 2) apply countywide, 3) appear to be without scientific or technical merit, 4) disrupt the delicate balance inherent to planning and zoning, and 5) create significant administrative staffing requirements.

The amendments proposed by Councilmember Elrich further exacerbate the issues presented above and have potential unintended adverse consequences to the environment and to housing.

The MNCBIA supports MNCPPC's recommendation to create a three-level applicability process; this change makes the Forest Law significantly easier for the residents and the regulated public to understand. The MNCBIA also supports Councilmember Elrich's

BUILDING HOMES, CREATING NEIGHBORHOODS

proposal to include 'Qualified Professionals', in addition to Certified Arborists and/or Tree Experts, to prepare Level Two tree inventories. Qualified Professionals receive tree care training as part of the certification process by the State. Additionally, Certified Arborists and/or Tree Experts are required to undertake or supervise the tree care operations.

The MNCBIA is opposed to the other significant amendments and the remainder of this testimony is arranged by the following amendment topics: 1) forest threshold increases, 2) adjustments to the land use categories, 3) extension of the maintenance and bonding period, 4) permit denials, 5) changes to definitions, 6) reducing the applicability standard from 40,000 sf lots to 10,000 sf lots, 7) adjustments to the maximum forest clearing to qualify for a level 2 or level 3 review, 8) creation of a Forest Conservation Coordinator, 9) denial of 'inaccurate' applications, 10) provision to revoke approvals, 11) removal of 'to the extent feasible', 12) removal of tree cover/landscaping to satisfy forest requirements, 13) doubling reforestation rates, 14) requiring banks in private ownership only, 15) public notice requirements, 16) private civil action, 17) ratio of existing forest for banking credit, 18) increasing the fee in lieu rate, and 19) transition period / effective date.

1. Forest Threshold Adjustments (p. 86, line 417)

This amendment proposes to increase the thresholds by 5 percent of the net tract area. The thresholds are the percentages of a property required to be retained as existing forest or planted as new forest. It is important to note that the potential impact of the proposed increase is as much as a **60% forest cover increase** over the current standard.

The current forest thresholds were thoughtfully established and vary by land use category in order to balance environmental protection with other planning and zoning objectives. As such, large lot and resource conservation zoning have a higher forest threshold than commercial and mixed-use development, in order to balance smart growth with environmental protection. Increasing the thresholds by any amount causes other planning and zoning objectives to fall short, particularly housing densities.

It can be reasonably expected that as the County continues to focus on redevelopment and infill development, the current afforestation rate will significantly increase county forest cover. This is due to the developed and unforested nature of those properties and assemblage of properties where the County expects future growth to occur -- as existing development gets redeveloped, it is currently required to add to the County's forest coverage.

2. Adjustments to the Land Use Categories (p. 72, line 87; p. 73, line 99, 104)

The proposal includes changing the land use categories: "high density" residential would include housing densities greater than 10 dus/ac, "medium density" would mean densities in the range of 1 du/ac – 10 dus/ac and, the new "low density" residential category would include densities less than 1 du/ac. These new definitions, coupled with the threshold increases create a significant imbalance of environmental, zoning and planning objectives. Similar to the forest thresholds, the land use categories were thoughtfully established to remain consistent with planning and zoning objectives.

These categories are not consistent with the zoning ordinance and would have the most profound impact on RDT-cluster, RC-cluster, and RS zones. Since these zones primarily utilize well and septic systems, a de facto down-zoning will occur to properties that contain upland forests in these zones.

3. Extension of the Maintenance and Bonding Period (p. 89, line 476)

This amendment proposes to extend the maintenance and bonding period from 2 years to 5 years for planted forest. However, the MNCPPC already has the authority to hold bonds and extend the maintenance period indefinitely until forest plantings are acceptable. This amendment is unnecessary and penalizes efforts to achieve successful forest plantings within the 2-year timeframe.

When installed, and maintained properly the success of a planted forest can be determined within two growing seasons.

The three factors impeding the creation of a successful forest in 2 years are:

- field-based decisions that detract from the project's success,
- ineffective regional management of invasive species and wildlife, and
- ineffective maintenance practices during the 2 years.

To ensure the success of forest plantings the County Council and MNCPPC would better focus on resolving these issues, rather than extending the timeframe carte blanche.

4. Permit Denials (p. 69, line 11)

This amendment proposes to require that a building permit cannot be issued for a property that has a violation of the Forest Law for a period of 5 years. This is of particular concern to the MNCBIA. This amendment could be used as a way of stopping the issuance of a building permit by undertaking an unlawful forest-related operation. Further, it is extremely unclear if this would apply to every unit that is part of a large project (when a minor violation has been properly cured, such as a silt fence or tree protection fence violation).

The Forest Law already has a process for penalizing illegal forest clearing. A system that educates residents and contractors of forest conservation requirements would be a more effective approach in the reduction of 'violations'.

5. Changes to Definitions (p. 69, line 20 – p. 75)

These series of amendments propose to alter the definitions of terms used throughout the Forest Law. While the MNCBIA has not had the opportunity to explore the full implications of all of these changes, we are concerned that many of these proposed changes have serious administrative and practical impacts. For instance, the proposed changes to the *Environmental Buffer* are inconsistent with the Environmental Guidelines for Development and would cause any steep slope, without regards to its proximity of a stream or it's size or whether it's artificial, to be protected.

The proposed changes to the definition of forest create significant confusion over what is and is not a forest - one could argue that a forest could include 2 trees that have been actively mowed or pastured under for many years. It is also unclear why priority planting areas are defined in the regulations when they are also identified elsewhere in the law.

6. Reducing the Applicability Standard from 40,000 sf lots to 10,000 sf lots (p. 76, line 166)

This amendment proposes to broaden the applicability of this law to 10,000 sf lots. Currently, the Law only applies to lots 40,000 sf and greater. In addition to creating an overwhelming administrative burden (MNCPPC predicts needing to almost double the number of forest conservation staff reviewers) this proposal is technically and scientifically unsound. The current 40,000 sf applicability threshold is based largely upon the minimum size of a forest as being 10,000 sf. Currently, an unforested 40,000 sf lot would create a 10,000 sf forest – 10,000 is the minimum size for a forest to be viable and self-sustaining. Lowering the applicability threshold below 40,000 sf will create small fragments of trees, smaller than 10,000 sf, and create a substantial administrative burden to the County.

Further, expanding this law to cover 10,000 sf lots and greater would primarily regulate existing residences intending to add additions, detached garages, sheds, and other relatively minor property improvements. The costs for these small-lot-owners to comply with the proposed Forest Law could be up to \$40,000.

In addition, the MNCBIA believes that this amendment is intended to tree cover in mature neighborhoods. Tree cover, however, is not considered forest.

7. Adjustments to the Maximum Forest Clearing to Qualify for a Level 2 or Level 3

Review (p. 76 – 77; throughout)

This amendment proposes to change the cut-off point at which a single-lot property owner is subject to a Level 1, 2 or 3 review from clearing 40,000 sf of forest down to 5,000 sf of forest. The levels have varying requirements with the requirements of the Level 1 being the most stringent.

This requirement will require many small lot property owners to undertake the stringent requirements of a Level 1 review, thus adding to MNCPPC's staffing challenges and increasing the costs for residents of small properties.

While the MNCBIA supports MNCPPC's Level 1, 2, and 3 proposed process, the changes proposed by Councilmember Elrich would circumvent the lack of clarification that this seeks to resolve and further frustrate this Law. The MNCBIA recommends utilizing MNCPPC's recommendation for the Level 1, Level 2 and Level 3 reviews.

8. Creation of a Forest Conservation Coordinator (p. 97, 670)

This amendment proposes to create a Forest Conservation Coordinator that would be an employee of the Department of Environmental Protection (DEP). This amendment would give the Coordinator equal standing as the County's Planning Director to approve or deny variance requests. The MNCPPC already has a Forest Conservation Manager who is responsible for many of the efforts proposed for a Coordinator and as such, the efforts would be duplicative and confusing to residents and the regulated community.

9. Denial of 'inaccurate' Applications (p. 83, line 357; p. 84, line 371)

This amendment proposes to require that any application deemed 'inaccurate' must be denied. The MNCBIA strongly objects to this language as every application would be denied from the outset given the vagueness of many of the issues and methodologies that a Natural Resource Inventory/Forest Stand Delineation and Tree Inventory include. For instance, when measuring the diameter at breast height (dbh) of a tree, there are at least three types of tools (tree caliper, Biltmore stick, dbh tape, etc), each of which has various degrees of accuracy. In addition, when determining where the tree is located on a property, there are several degrees of accuracy depending upon how the tree is surveyed (ocular 'eyeball' estimate, GPS, conventional survey, etc). Finally, there have been instances when MNCPPC and an applicant disagree on interpretations of guidelines, regulations or laws and they must work together to resolve the matter. This language eliminates the cooperation required to process and resolve plans and makes it nearly impossible to initiate a project.

10. Provision to Revoke Approvals (p. 84, line 361 and 375)

This amendment proposes to revoke approvals of NRI/FSDs and Tree Inventory Plans if, during the development review process, false or misleading information was relied upon. The same concerns arise as in the previous section. As the development process progresses, more accurate and detailed information arises that might conflict with earlier information. Examples include the use of more accurate technology to locate trees that may adjust its precise location or further geological studies to mark soil boundaries and conditions.

11. Removal of 'to the extent feasible' (p. 85, line 401)

This amendment proposes to remove the term 'to the extent feasible' as it relates to efforts to 'retain certain vegetation and specific areas in an undisturbed condition.' This is particularly troubling as 'certain vegetation' and 'specific areas' are undefined and this creates an impossible burden of proof for a property owner.

12. Removal of tree cover/landscaping to satisfy forest requirements (p. 86, line 413, p.88, line 446)

This amendment proposes to remove "tree cover" and "landscaping" as a method of achieving the afforestation requirements for a project. The utilization of street trees and landscape areas to achieve afforestation requirements is essential in urban infill and redevelopment situations, when no other priority planting areas exist. Removal of this provision would adversely constrain redevelopment and urban infill opportunities.

13. Doubling Reforestation Rates (p. 87, line 439)

This amendment proposes to double the reforestation rate for forest clearing above the conservation threshold. Currently, for every acre removed, a quarter acre of forest is required to be planted. The amendment proposes to raise this to a half acre. Similar to the establishment of the minimum lot area and the thresholds, the current ¼:1 rate was established to ensure that the planting could be accommodated in a reasonable manner. In many instances, the increased reforestation requirements will not be able to be accommodated on a property without a reduction in density and/or a compromise to other County objectives.

14. Requiring forest banks in private ownership only (p. 91, line 529)

This amendment proposes to require that forest mitigation banks may only be installed on privately held property. The MNCPPC Forest Conservation Taskforce discussed this matter and the group identified the opportunity that existed for a public/private partnership to manage and protect the County's vast parkland. The MNCBIA believes that the door should not be shut on this opportunity by this proposed amendment.

15. Public Notice Requirements (p. 92, line 545)

This amendment proposes to require that applicants notify the Planning Director and residents and owners of adjoining and confronting properties prior to performing any cutting, clearing and grading. This requirement is of concern for several reasons. The forest conservation permit is just one of several permits that an applicant must obtain to undertake an improvement to their property. It is ancillary to the building permit and grading permit; the extensive notification requirement could easily be overlooked, particularly by an inexperienced contractor or homeowner, resulting in a substantial number of new violations. Further, for a subdivision approval, which adjacent properties would be required to be noticed? Would it be the previous-adjacent properties or the properties created internal to the subdivision?

16. Private Civil Action (p. 93, line 570)

This amendment proposes to give standing to any Montgomery County resident or organization, whether or not they are materially damaged by any clearing. In addition it sets Park & Planning and the complaining party at odds. This is an unnecessary requirement as MNCPPC has the most appropriate technical and legal knowledge to enforce this law and remediate violations and the current system prevents abuse.

17. Ratio of existing forest for banking credit (p. 89, line 468)

This amendment proposes to increase the forest-banking requirement from protection of 2 acres of existing off-site forest for 1 acre of forest planting requirement to 4 acres of existing off-site forest for 1 acre of planting requirement. This amendment is too large of an increase, as it would cause the existing forest banks to dwindle more rapidly, which would have an adverse effect primarily to urban infill and redevelopment, which primarily rely upon forest banking.

18. Increasing the fee in lieu rate

This amendment proposes to increase the fee-in-lieu from \$0.90/sf to \$2/sf. The fee-in-lieu option is most commonly exercised for small, typically urban infill and redevelopment properties that do not contain environmentally sensitive areas or appropriate forest planting areas. This change will significantly and adversely impact the type of smart growth land uses that this County is encouraging.

This amendment adds significant costs to individual homeowners wishing to improve their property. This amendment by itself increases the costs to homeowners of small lots (less than 40,000 sf) by as much as \$11,000.

An additional concern raised by this increase is the lack of clarity as to how the collected fees will be used. The MNCBIA understands that to date the fee-in-lieu account contains has a balance of approximately \$250,000 –300,000, and that there have been no expenditures. .

19. Transition period / effective date (p. 98, line 697)

Considering the substantial timeframes that projects require for approval, including the pre-application meeting requirements, the MNCBIA suggests a transition period that grandfathers projects that have already initiated the development review process (i.e. pre-application meeting with residents/community or MNCPPC).

The MNCBIA appreciates the opportunity to provide these comments. As you can tell by the length and breadth of this testimony, Bill 37-07 is of serious concern to our many members and their employees; we believe that these amendments should be of great concern to County residents, particularly those owning properties from 10,000 sf to 40,000 sf. We look forward to working with members of the Council and Staff in future work sessions relating to these legislative matters.

Sincerely,

MARYLAND NATIONAL CAPITAL BUILDING INDUSTRY ASSOCIATION



Dusty Rood
Chairman, Environmental Committee

Cc: Frank Bossong, Vice President, Montgomery County, MNCBIA
Rick Sullivan, President, MNCBIA

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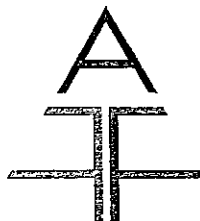
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American Forest Foundation

Laurence D. Wiseman, President & CEO

January 22, 2008

032893



The Honorable Mike Knapp
President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear President Knapp,

As a long-time forest conservationist and life-long resident of Montgomery County, permit me to register my concerns about certain aspects of the Forest Conservation Law, Bill 37-07 and amendments thereto.

One of the most prevalent myths among policymakers is that by preventing the harvest of trees, they can somehow "save" forests. Our experience in Maryland demonstrates the exact opposite.

The largest part of Maryland's and virtually all of Montgomery County forests are owned by private individuals and families. Some depend on periodic sales of timber to earn enough cash to pay taxes on their land, and reinvest in the future health of their forests. Without the cash from cutting trees, many won't be able to sustain their commitment to conservation. Some will succumb to development pressures; their forests will truly disappear, replaced by concrete and asphalt.

That's the worst possible outcome, but easily foreseeable if the County over-reaches in its forest conservation initiative. Certainly, all forest harvests should follow rigorous plans, under the direction of well-trained loggers and/or professional foresters. To add extra, unnecessary layers of review and approval - or outright bans - to state laws already in place would only drive more owners off the land and exacerbate the very problems you're attempting to solve.

Sincerely,

Laurence D. Wiseman
10621 Democracy Lane
Potomac, Maryland 20854

cc: Steve Koehn, Maryland State Forester
Letters to the Editor, Potomac Gazette

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Maryland/Delaware Society of American Foresters

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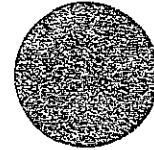
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MF
CC
AM

March 5, 2008

033797



Council President, Mike Knapp
Montgomery City Council
100 Maryland Avenue
Rockville, MD 20910

RE: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

I am writing on behalf of the Maryland/Delaware Society of American Foresters (MD/DE SAF) to express our concerns with Bill 37-07 and the proposed Amendments to Bill 37-07 which affects Montgomery County's Forest Conservation Law.

- 1) Forest landowners in Montgomery County must be able to retain their right to practice sustainable forestry on their property. Sustainable forestry, defined as "the practice of meeting the forest resource needs and values of the present without compromising the similar capability of future generations," may include forest harvesting in order to maintain the health and productivity of the forest into the future. This is the means to ensure that currently forested lands remain forested for the benefit of future generations of Maryland citizens. The MD/DE SAF advocates that forest harvesting is accomplished according to a timber harvest plan, forest stewardship plan or a forest management plan prepared by a Maryland Licensed Professional Forester and per an approved sediment control plan. A sustainable forest harvest should not be confused with loss of forest land such as to development. These forests, harvested under a management plan, are renewable, and will provide valuable wildlife habitat and landscape diversity while maturing.
- 2) Commercial logging and timber harvesting operations should be treated no differently than agricultural activities as stated in Section 22A-4(d) Level 3 Review in both Bill 37-07 and the Amendment to Bill 37-07. Forest harvesting is considered by the Maryland Department of Agriculture as an agricultural activity and the timber harvest plans should not be required to undergo another level of scrutiny – the only proposed activity under Level 3 that requires this additional requirement. A Declaration of Intent should be sufficient.
- 3) We are concerned about the language in Section 22A-4(d)(4)(A) which requires that all forest harvests require the approval of the County Arborist. The County Arborist is a highly trained individual, but, an arborist is not a Maryland Licensed Professional Forester and is not qualified to rule on forest harvest decisions. A Maryland Licensed Professional Forester is fully qualified to prepare a timber harvest plan and understand the requirements of the Forest Conservation Act - his work should be acceptable to the County without further review by the County Arborist.



Society of American Foresters
Growing better all the time

276

Mike Knapp
March 5, 2008
Page 2.

The Maryland/Delaware Society of American Foresters is made up of 160 Professional Foresters and Forest Technicians from across Maryland and Delaware. While we may work for a variety of employers, our jobs involve managing the forest resources of Maryland to provide the goods and services for the citizens of Maryland while conserving these resources for future citizens.

We are available to assist you if you would like to further discuss this issue and our concerns. Thank you for the opportunity to comment on your proposed Forest Conservation Act revisions.

Sincerely,



Peter H. Miller
Maryland/Delaware Society of American Foresters Policy Chair

cc: Mark Pfefferle





MARYLAND

DEPARTMENT OF NATURAL RESOURCES

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John R. Griffin, Secretary
Eric Schwaab, Deputy Secretary

MF
CC
AM

January 15, 2008

032711



Council President Mike Knapp
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

2008 JAN 17 AM 8:53

MONTGOMERY COUNTY
COUNCIL

RE: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

Dear Council President Knapp:

The Maryland Department of Natural Resources Forest Service (the Maryland Forest Service), by this letter, is submitting comments on Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07 which effects Montgomery County's Forest Conservation Law.

The Maryland Department of Natural Resources Forest Service (the Maryland Forest Service) has the responsibility to restore, manage, and protect Maryland's trees, forest, and forested ecosystems in order to sustain Maryland's natural resources. Because of these responsibilities, the Maryland Forest Service via the Department of Natural Resources was charged, in 1991, with the authority to administer the State Forest Conservation Act (Natural Resources Article Title 5 Subtitle 16, Annotated Code of Maryland). One component of administering the Act is to review and approval the proposed amendments to local governments' forest conservation ordinances.

The Maryland Forest Service has the following concerns about Bill 37-07 and the Amendments to Bill 37-07:

1) Forest landowners in Montgomery County must have the right to practice sustainable forestry on their property. Sustainable forestry is the management of forest lands according to sound forestry practices, which may include harvesting timber, in order to maintain the health and production of the forest into the future. This is the means to ensure that currently forested lands remain forested for future generations of Maryland citizens. In order to ensure that the health and sustainability of the forest will be taken into account during management, the Maryland Forest Service advocates that timber harvesting is accomplished according to a timber harvest plan, forest stewardship plan or a forest management plan prepared by a Licensed Professional Forester and per an approved sediment control plan.

Commercial logging and timber harvesting operations should be treated no differently than agricultural activities as stated in Section 22A-4(d) Level 3 Review in both Bill 37-07 and the Amendment to Bill 37-07. Timber harvesting is considered by the Maryland Department of Agriculture as an agricultural activity and the timber harvest plans should not be required to undergo another level of scrutiny – the only proposed activity under Level 3 that requires this additional requirement. A Declaration of Intent should be sufficient.

pg. 2

Jan 15, 2008 Letter to Council President Knapp

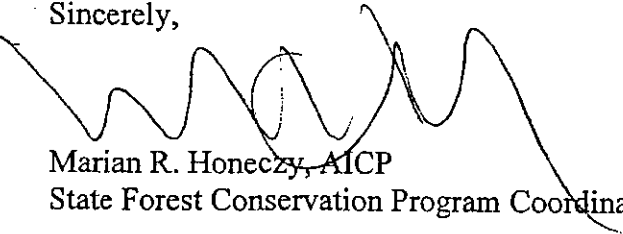
Re: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

2) Section 22A-4(c)(4) and Section 22A-4(d)(5) require state agencies to comply with the Montgomery County Forest Conservation Law. State government is preempted from complying with local government laws and this language is not necessary and confusing to the general public. The State has enacted the Maryland Reforestation Law of 1988 (Natural Resources Article 5-103, Annotated Code of Maryland) and the Maryland Forest Conservation Act of 1991 (Natural Resource Article 5-1601—1613, Annotated Code of Maryland) to accomplish forest protection and mitigation by state agencies during highway construction.

To restate our main concern, the Maryland Forest Service advocates that the management of the forest lands, including timber harvesting, be done according to sound forestry practices. Active management is necessary in order to maintain the health and production of the forests in the state. By doing this, currently forested lands will remain forested lands for future generations.

If you wish to meet to discuss this further or if you have any questions I can be reached at (410) 260-8511 or via email at mhoneczy@dnr.state.md.us

Sincerely,



Marian R. Honeczy, AICP
State Forest Conservation Program Coordinator

cc: Steve Koehn, Director/State Forester
Wayne Merkel, MD Forest Service Regional Forester

Council President Mike Knapp
Montgomery County Council
100 Maryland Ave.
Rockville, MD 20850

RE: Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07

Dear Council President Knapp:

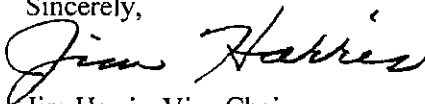
The Montgomery County Forest Conservancy District Board (Forestry Board), by this letter, is submitting comments on Bill 37-07, Forest Conservation and the proposed Amendments to Bill 37-07 which affects Montgomery County's Forest Conservation Law.

The Forestry Board is keenly interested in the restoration, management, and protection of Maryland's trees, forests, and forested ecosystems in order to sustain Maryland's natural resources. In that spirit, the Forestry Board asks the Montgomery County Council to consider the following recommendations regarding Bill 37-07 and the Amendments to Bill 37-07:

- 1) Forest landowners in Montgomery County should have the right to practice sustainable forestry on their property. Practicing sustainable forestry includes managing their forest and harvesting timber according to sound forestry practices. Timber harvesting should be performed in accordance with a Forest Stewardship Plan or a Forest Management Plan prepared by a Licensed Professional Forester and in compliance with a sediment and erosion control plan approved by the local Soil Conservation District.
- 2) Commercial logging and timber harvesting operations should be treated no differently than agricultural activities as stated in Section 22A-4(d) Level 3 Review in both Bill 37-07 and the Amendment to Bill 37-07. Timber harvesting is considered, by the Maryland Department of Agriculture, an agricultural activity and timber harvest plans should not be required to undergo another level of scrutiny—the only proposed activity under Level 3 that requires this additional requirement.
- 3) Section 22A-4(c)(4) and Section 22A-4(d)(5) require state agencies to comply with the Montgomery County Forest Conservation Law. State government is preempted from complying with local government laws and this language is not necessary and is confusing to the general public. The State has enacted the Maryland Reforestation Law of 1988 (Natural Resources Article 5-103, Annotated Code of Maryland) and the Maryland Forest Conservation Act of 1991 (Natural Resource Article 5-1601—1613, Annotated Code of Maryland) to accomplish forest protection and mitigation by state agencies during highway construction.

The Forestry Board appreciates the opportunity to submit these comments and is available to discuss this further.

Sincerely,



Jim Harris, Vice Chair
Montgomery County Forest Conservancy District Board
Cc: Steve Koehn, Director/State Forester



3

AGRICULTURAL ADVISORY COMMITTEE

January 22, 2008

The Honorable Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Agricultural Advisory Committee Testimony – Bill 37-07 – Amendments to the
Forest Conservation Law Public Hearing – January 22, 2008

Dear Council President Knapp:

On behalf of the Montgomery County Agricultural Advisory Committee, we thank the County Council for this opportunity to comment on Bill 37-07 which proposes Amendments to the Forest Conservation Law. There are a number of questions and concerns we have regarding the amendments and how they will be specifically applied to agricultural operations. Due to our questions regarding the interpretation and implementation, the AAC cannot support the amendments at this time as we need additional time to understand them.

We recognize the importance of forest conservation and we encourage landowners to participate with programs that provide cost share assistance for planting trees as part of their agricultural operation. At Butler's Orchard, we are proud of the way we manage both our cropland and woodland acres in providing a variety of agricultural and horticultural products to our customers.

In accordance with Chapter 59 of the County Code, the legal definition of agriculture in Montgomery County includes the products of forestry, horticulture and Silviculture and all agricultural uses including those mentioned above are permitted at all times in the Rural Density Transfer Zone which we know as our Agricultural Reserve. We need to understand if this Bill 37-07 creates a new legal requirement that will permit all agricultural uses as long as you have a declaration of intent approved by the Planning Board. The County Government has a good record of supporting the farmers in their pursuit of farming as a way to earn a living and way of life. The AAC encourages the Council to review these amendments carefully and make sure they are clearly written in a manner that will support agriculture and not work against agriculture.

As stewards of the land, farmers need the ability to farm and this inherently involves the disturbance of more than 5,000 square feet of soil to plant and produce agronomic crops which is legally defined as agriculture in Montgomery County. We question the requirement for the

declaration intent and we need to better understand how and when it will be required. Some of the proposed amendments and conditions are difficult to understand and they are not clear to us. We do not understand why agricultural operations are not specifically listed as exempt from the requirements of forest conservation and we need to understand the basis for this change in policy.

The County's agricultural industry is strong and diverse; however, weather and dry conditions like we witnessed last year demonstrate how fragile the farm economy can be. We must be careful that requirements for forest conservation do not take precedent over agricultural production. Farmers need to be given incentives and new opportunities to decide what crops and/or trees to plant on their farms without pressure from government telling them what to do, where and what to plant, and finally that you cannot harvest any of the trees after the planting is completed.

Thank you for this opportunity to present the recommendations of the Agricultural Advisory Committee on the proposed amendments to the Forest Conservation Law. We will participate in the up-coming Transportation and Environment work sessions to obtain answers to our questions.

Sincerely,

Wade Butler, JVC

Wade Butler, Chairman
Agricultural Advisory Committee

cc: County Council Members
Pradeep Ganguly, Ph.D, Director, DED
Jeremy V. Criss, DED Agricultural Services Manager



AGRICULTURAL PRESERVATION ADVISORY BOARD

January 22, 2008

Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Written Testimony – Council Bill – 37-07 – Amendments to the
Forest Conservation Law Public Hearing – January 22, 2008

Dear Council President ^{mike}Knapp:

Please accept this letter as formal written testimony of the Montgomery County Agricultural Preservation Advisory Board (APAB) regarding Council Bill 37-07 Amendments to the Forest Conservation Law. The APAB will offer general comments about the amendments including our specific concerns regarding the proposed changes.

General Comments:

As a general comment, there is perhaps no other Board or Commission within Montgomery County that is keenly aware of the inherent conflict that exists between the preservation of agricultural land and the conservation of forest resources. In 1980, the County through the Functional Master Plan for the Preservation of Agriculture and Rural Open Space prioritized a commitment to the protection of viable agricultural land. This commitment provided the means for stabilizing the loss of valuable cropland and open space to help maintain the fabric of rural communities among a rapidly developing County. We must be sensitive to changes in land use policies including environmental laws and regulations and we must insure amendments do not have a profound impact to this valuable resource and agricultural industry.

The County's agricultural industry provides in excess of \$250 million dollars in economic contribution to the County's economy. We must ensure requirements for forest conservation do not take active agricultural land out of production, particularly where the County has made tremendous investments to protect agricultural production through agricultural preservation easements. Forest conservation must be considered in the context of existing forest resources and implemented on agricultural land at the discretion of the landowner.

Specific Comments:

It is for the reasons stated above that we recommend against any amendment which will negatively impact production capability on active farmland in our agricultural areas.

The APAB recommends that totally removing all exemptions from the law in favor of varying levels of review is a major mistake. Agricultural lands protected by over 68,752 acres of easements should be afforded relief from forest conservation requirements so that we do not require the planting trees on the same productive agricultural lands where public investments have been made to protect cropland for food and fiber production in preference of meeting forest conservation program requirements.

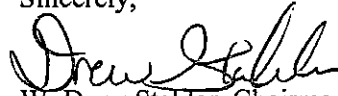
The APAB recommends that Section 22A-3 definition of Net Tract Area needs to be modified so that the definition of Agricultural Activity shall include "land clearing" for agricultural purposes (crop fields, pasture, paddocks, agricultural buildings, etc.). Forest shall be defined as an area at least 35 feet wide, as in State Law. Net Tract Area shall be defined to not include Forest Bank Areas. The Net Tract Area for agriculture and resource areas shall only be that portion of agricultural land being changed to a residential use (i.e. 25 acre lot development with a 2-acre home development area shall be considered 2-acres net tract area for calculation purposes). This shall be no greater than the "limits of disturbance" as shown on the development plan. We believe the Agricultural Preservation Advisory Board, and not the Planning Board or their designee, is the most appropriate organization for determining the portions of land which are no longer suitable for agricultural production by proposed improvements or disturbances.

The APAB is very concerned over the deletion of the exemption for agricultural activities as outlined in Section 22A-5 (b) which states "*an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2). Agricultural support building and related activities are exempt only if built using best management practices.*" This section has been replaced with the need to comply with a Level 3 review requiring a declaration of intent by the landowner approved by the MNCPPC. While we hope MNCPPC's intent of the proposed amendment for level 3 activity was not to include all types of agricultural land disturbance activities, the reality is that a strict interpretation of this section would not preclude MNCPPC from exercising authority over all agricultural disturbance activities including normal cultivation. This section needs to be clarified so that it is clear where normal and customary agricultural land disturbance activities do not require a declaration of intent and a level 3 activity review or any other level activity review for that matter.

Finally, the APAB believes in the interest of maximizing the protection of agricultural land, a modification to Section 22A-12. This section should be modified to state "The placement of residential units on Agricultural areas is preferred to be located on non-tillable land or on forest land." It shall be a priority that fields and tillable acres shall remain a priority and be available for farming activity. The Conservation Threshold and the Afforestation Threshold for Agricultural and Resource Areas shall only include that area to be developed or the limit of disturbance, whichever is greater. The Conservation Threshold shall be changed to 25% and the Afforestation Threshold shall remain 20%. Another related modification should be made to Section 22A-12(e)1(A.). This section should be modified to state "The use of offsite forest mitigation banks where other techniques are not practical."

Thank you for considering the comments and recommendations offered by the APAB regarding the Board's proposed amendments to the Forest Conservation Law. It is our hope and desire that the County Council can support our proposed changes so that Forest Conservation Law administered by the Planning Board will not negatively impact vital agricultural operations needed to support our critical mass of agricultural land

Sincerely,



W. Drew Stabler, Chairman
Agricultural Preservation Advisory Board

cc: County Council Members
Pradeep Ganguly, Ph.D, Director, DED
Jeremy V. Criss, DED Agricultural Services Manager

4

MONTGOMERY COUNTY FARM BUREAU

24110 Laytonsville Road
Gaithersburg, Maryland 20882

Telephone: 301-353-8867 – Fax: 301-253-1525

January 22, 2008

Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Bill 37-07 – Amendments to the Forest
Conservation Law

Dear Council President Knapp:

On behalf of the Montgomery County Farm Bureau, which is represented by over 3,000 families in the county, I want to thank the County Council for allowing me this opportunity to comment on Bill 37-07 regarding proposed Amendments to the Forest Conservation Law.

The Farm Bureau cannot support these amendments as proposed because they do not provide sufficient safeguards for agricultural operations. We too have a number of questions and concerns regarding the amendments and it would be helpful for us to see some specific examples of what constitutes level 1, 2, and 3 review activity for forest conservation so we can better understand how they will impact agricultural operations.

Montgomery County is a strong supporter of agriculture as demonstrated by the continued efforts to engage the agricultural community and by providing resources for programs and services that assist the farmers and the rural community. We come here tonight not to complain, but to ask that you be sensitive to the plight of agriculture and make sure the forest conservation law does not place an undue burden on farmers. I purchased my farm in 1946 and I've been farming ever since. I have witnessed the actions and tactics of the Maryland National Capital Park and Planning Commission over the years and I can tell you that if farmers are required to obtain a declaration of intent from this organization in order to farm, this environment will not be a good one for anybody, including you.

Did you know the State of Maryland is a leader in this country for developing the agricultural preferred tax assessment system, whereby property taxes on farms are assessed at a lower agricultural rate as compared to the highest and best use tax rate? Our property tax system has been in place since 1960 and I was one of the contributors that helped to develop the process and procedures including the Declaration of Intent to Farm as required by the Department of Assessments and Taxation in all of the Counties through out the State. The forest conservation amendment proposes the use of another declaration of intent that may confuse everyone and it may be helpful if we simply identify an alternative approach and not use this same term for the purposes of forest conservation.

Representatives from the agricultural community are willing to help you with this Forest Conservation Law to insure that you have a better understanding of the challenges and expenses of farming in Montgomery County.

Thank you again for providing this opportunity to present the recommendations of the Montgomery County Farm Bureau on the proposed amendments to the Forest Conservation Law.

Sincerely,

A handwritten signature in cursive script, appearing to read "George Lechlida".

George Lechlida, President
Montgomery County Farm Bureau



6

Montgomery Soil Conservation District

18410 Muncaster Road - Derwood, MD 20855 - Phone (301) 590-2855 - Fax (301) 590-2849

January 22, 2008

The Honorable Michael Knapp, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RE: Written Testimony for the Public Hearing regarding Bill 37-07
Amendments to the Forest Conservation Law

Dear Council President Knapp:

The Montgomery Soil Conservation District (MSCD) Board of Supervisors would like to provide comments on Bill 37-07 – Amendments to the Forest Conservation Law, which could potentially have far reaching consequences for agricultural landowners in the County. The MSCD has a number of concerns regarding the removal of agricultural exemptions being proposed in these new amendments. Although we have done our best to evaluate the myriad of changes in this proposed legislation, we are still not clear on the intentions of these amendments or the impacts they will have on our conservation efforts. MSCD is unable to support these amendments, and we hope that the Council will provide ample opportunity to consider additional changes to the legislation based on input from the agricultural community.

Our interpretation of the proposed amendments indicates that the Planning Board intends to remove the exemptions previously granted for agricultural practices. In Section 22A-4-Persons Subject to the Forest Conservation Law it states that "A person must submit to a Level 3 review if the person: (1) proposes an agricultural activity that is exempt from: (A) platting requirements under Section 50-9; and (B) a requirement to obtain a sediment control permit under Section 19-2(c)(2)..." This new language basically reverses the agricultural exemption under previous guidelines. Furthermore, the "Exemptions" Section under 22A-5 has been completely eliminated, including the ag exemption section.

Does this now mean that agricultural and conservation activities will require a Level 3 review? The Council must take a critical look at this policy and consider if they want to require landowners to submit to this type of review anytime they want to complete an agricultural or conservation practice on their property! The proposed legislation goes on to describe a Level 3 review, which provides that the Planning Director has up to 45 days to notify the applicant whether the Declaration of Intent was complete and whether it is granted! So a farmer must now wait up to 45 days to complete ag operations that were previously exempt? Based on most farmers' experiences with MNCPPC this doesn't sound like a productive situation!

Since 1945, the MSCD has helped residents of Montgomery County to make wise use of their soil, water and other natural resources. We certainly appreciate the value of forest conservation and management as an important tool to protect water quality, provide valuable wildlife habitat, and generate welcome income for landowners. In fact, we frequently work with landowners to plant trees and conserve natural resources as part of our Soil Conservation and Water Quality Planning process. We also recognize that forest management, also known as silviculture, is considered the agriculture of trees. As such, MSCD believes a landowners' decision to practice forest management on their property should be their right. There is already a system in place regarding permits required for forest harvesting, and any additional oversight is unnecessary.

An issue of great concern to MSCD is the requirement that forest harvest operations be subjected to an additional level of review by the County Forest Conservation Coordinator. The Forest Conservation Coordinator may not even be a Licensed Forester, and yet they are to be responsible for overseeing forest harvesting proposals?! Managing a forest through proper silvicultural practices is a form of agriculture. If a landowner submits a Declaration of Intent, which certifies that they do not intend to develop the site, then the Forest Conservation Law (FCL) should not apply. The State Forest Conservation Law exempts forest harvest operations from review with the submittal of a Declaration of Intent. Why is MNCPPC attempting to extend the FCL beyond development review? Is it the County's intent that MNCPPC have jurisdiction over agricultural practices?

The Forest Conservation Law is supposed to insure that trees and forests are considered as part of the development process. It should not be expanded to include agricultural practices, silvicultural activities, or conservation initiatives. These proposed changes represent another case of MNCPPC attempting to spread their reach far beyond the acceptable limits of their purview.

The MSCD appreciates the opportunity to provide testimony on this proposed legislation. We also know that the County Council cares about the agricultural community, and we hope you will take a careful look at the potential impacts of Bill 37-07 as it is currently proposed. Thank you for considering our comments as you attempt to improve this legislation.

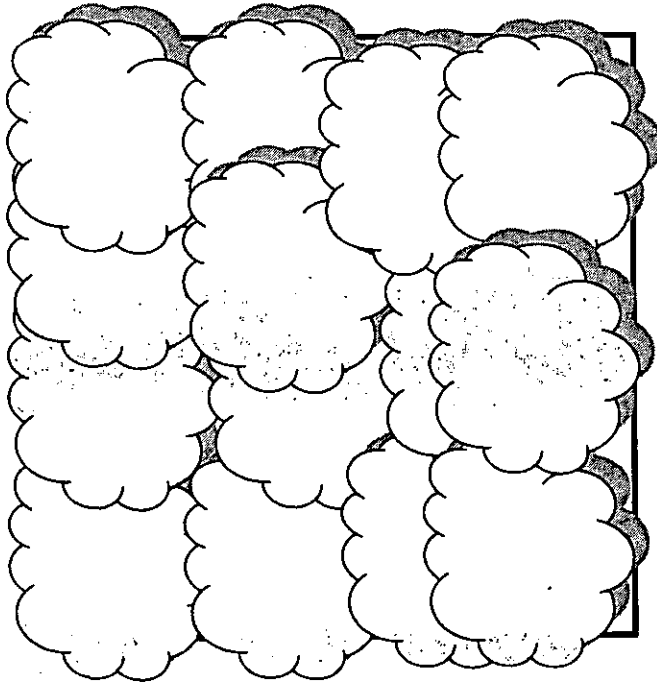
Sincerely,



Pam Saul, Board Supervisor
Montgomery Soil Conservation District

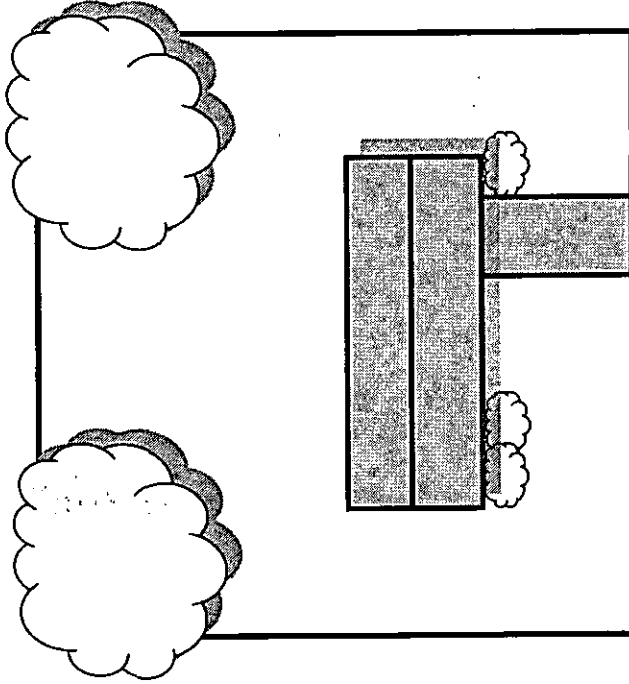
Cc: County Council Members
Isiah Leggett, County Executive
Pradeep Ganguly, Director DED

Before



- Lot is less than 40,000 sq. ft.
- Forest is less than 40,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is less than 40,000 sq. ft.
- Forest Loss is less than 40,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL does not apply – lot less than 40,000 sq. ft.

Bill 37-07

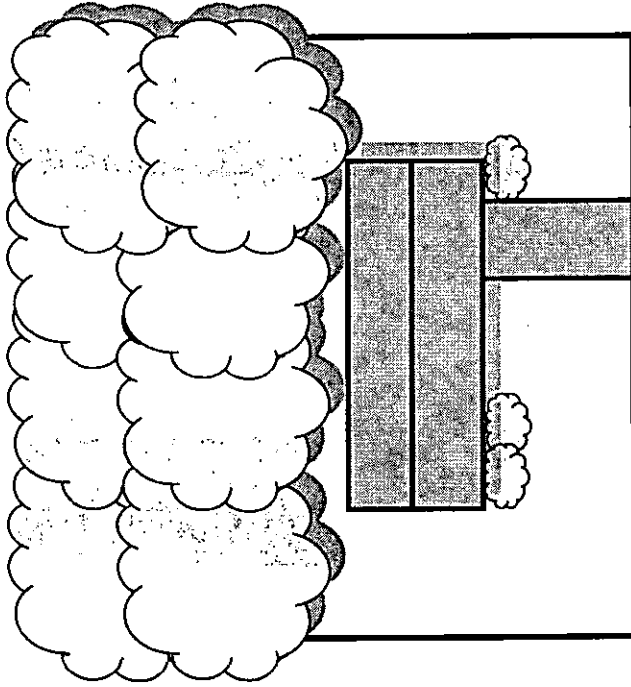
- FCL does not apply – lot less than 40,000 sq. ft.

Elrich Amendments

- FCL does not apply – lot less than 40,000 sq. ft.

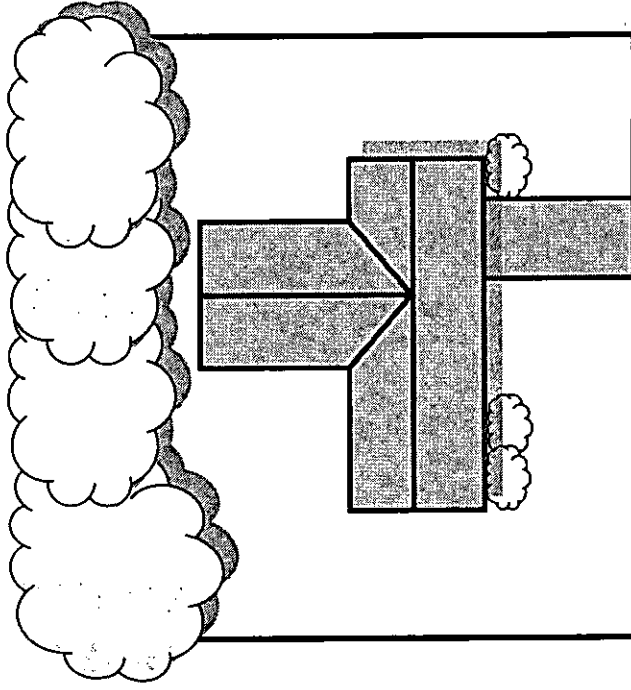
March 12, 2008

Before



- Lot is less than 40,000 sq. ft.
- Forest Area = 10,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is less than 40,000 sq. ft.
- Forest Loss = 6,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL does not apply – lot less than 40,000 sq. ft.

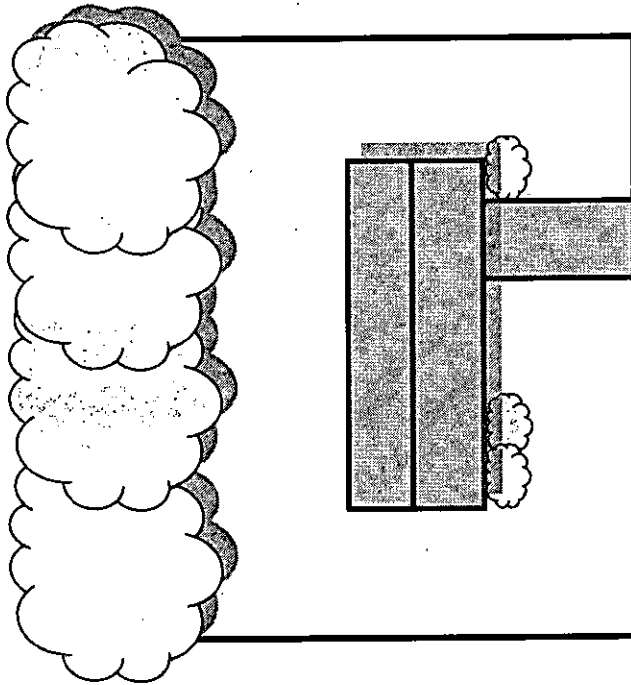
Bill 37-07

- FCL does not apply – lot less than 40,000 sq. ft.

Elrich Amendments

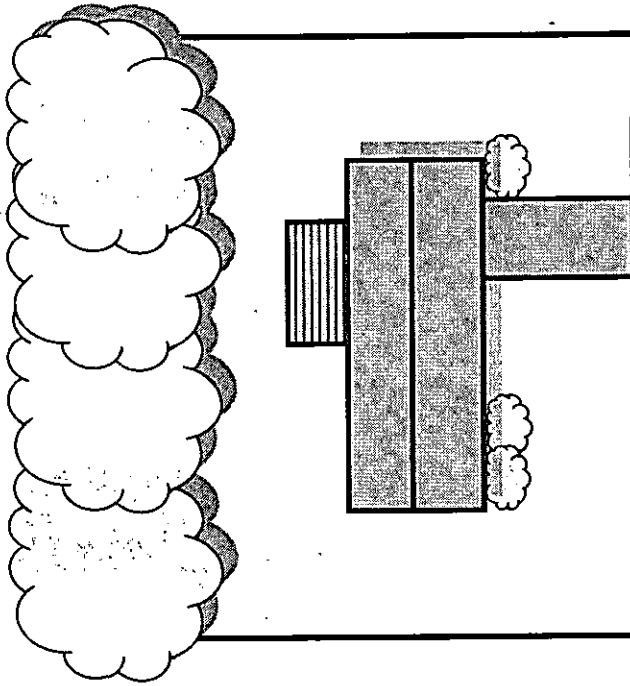
- FCL does not apply – lot less than 40,000 sq. ft.

Before



- Lot is greater than 40,000 sq. ft.

After



- Lot is greater than 40,000 sq. ft.
- **No Forest Loss**
- **Sediment Control Permit is not required**

Current Forest Conservation Law

- FCL does not apply – lot greater than 40,000 sq. ft. BUT no Sediment Control Permit required

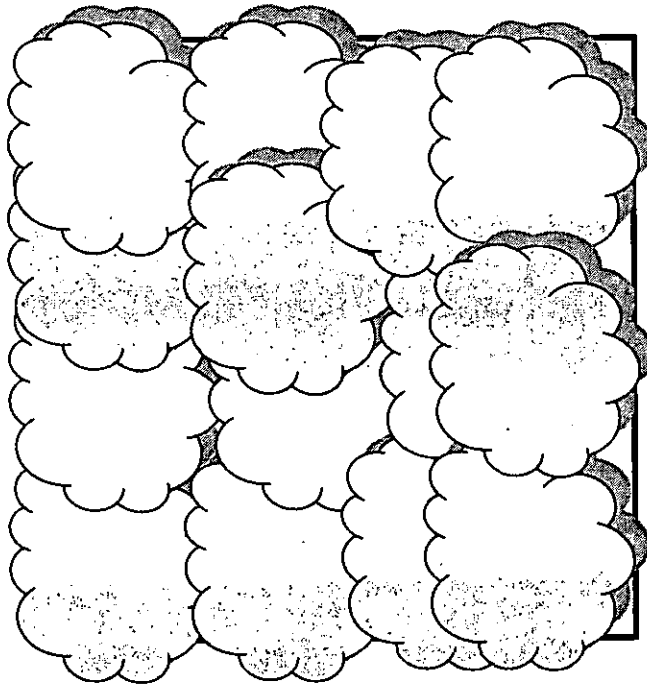
Bill 37-07

- FCL does not apply – lot greater than 40,000 sq. ft. BUT no Sediment Control Permit required

Elrich Amendments

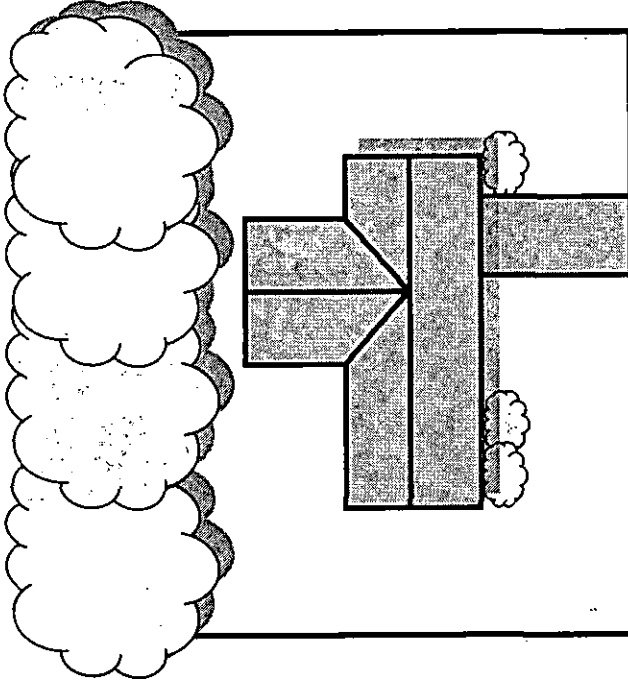
- FCL does not apply – lot greater than 40,000 sq. ft. BUT no Sediment Control Permit required

Before



- Lot is **greater** than 40,000 sq. ft.
- Forest is **greater** than 40,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is **greater** than 40,000 sq. ft.
- Forest Loss is greater than 40,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Forest Conservation Plan required – more than 40,000 sq. ft. of forest lost

Bill 37-07

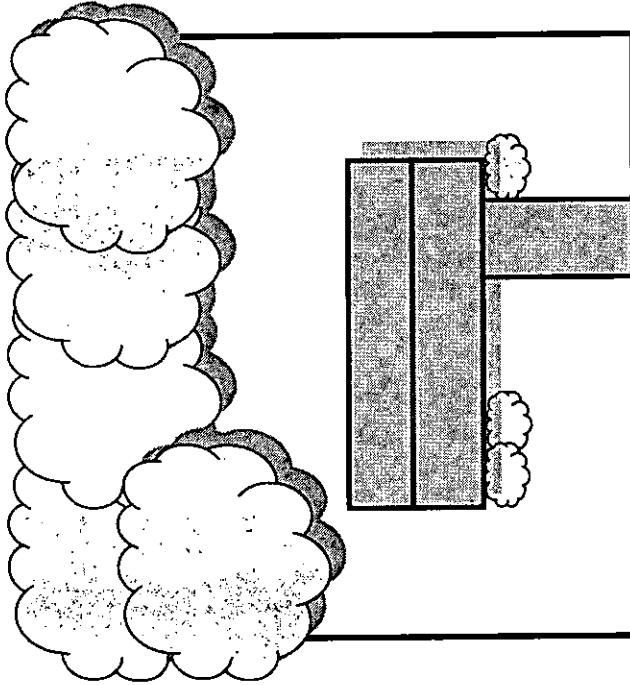
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 40,000 sq. ft. of forest lost

Elrich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 5,000 sq. ft. of forest lost

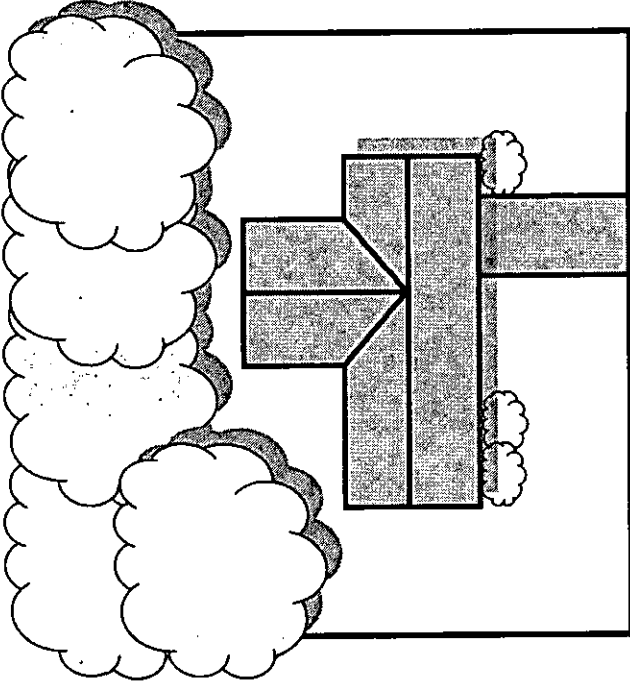
March 12, 2008

Before



- Lot is greater than 40,000 sq. ft.
- Forest area = 12,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is greater than 40,000 sq. ft.
- Forest Loss is **less** than 5,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Letter of Exemption from Forest Conservation Plan required – less than 40,000 sq. ft. of forest lost

Bill 37-07

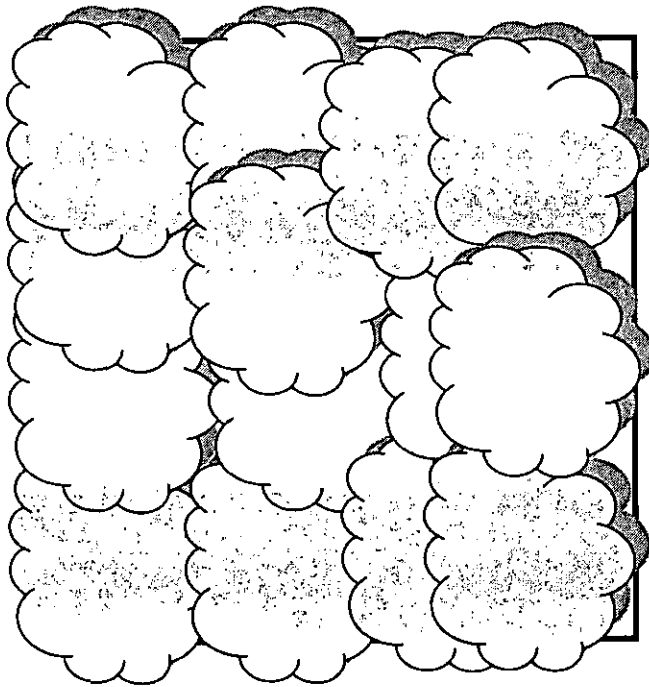
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 40,000 sq. ft. of forest lost

Eirich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 5,000 sq. ft. of forest lost

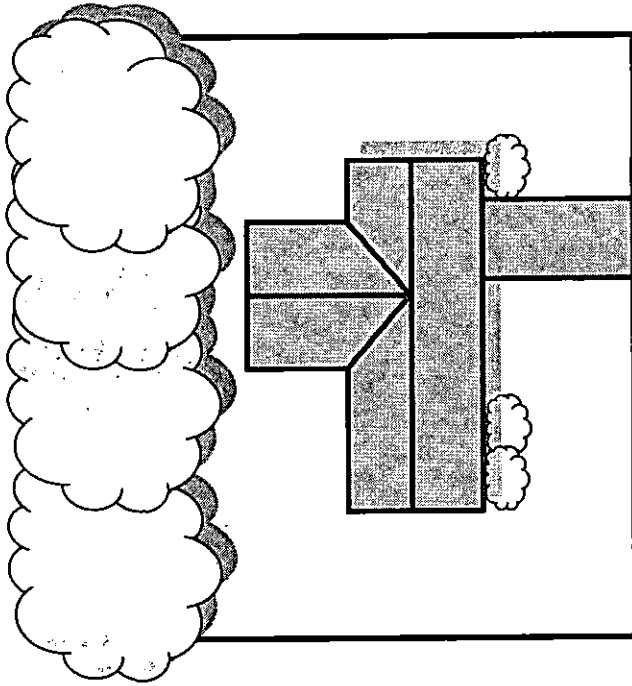
March 12, 2008

Before



- Lot is **greater** than 40,000 sq. ft.
- Forest is **greater** than 40,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is **greater** than 40,000 sq. ft.
- Forest Loss = 30,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Letter of Exemption from Forest Conservation Plan required – less than 40,000 sq. ft. of forest lost

Bill 37-07

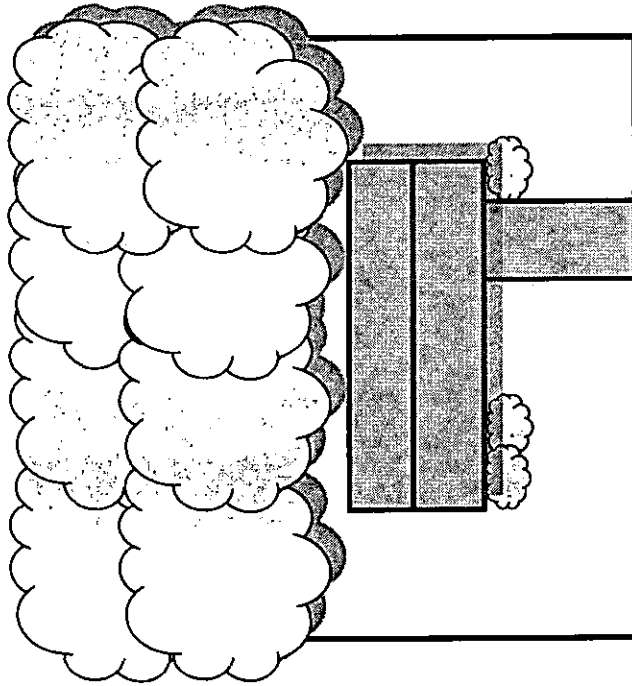
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 40,000 sq. ft. of forest lost

Elrich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 5,000 sq. ft. of forest lost

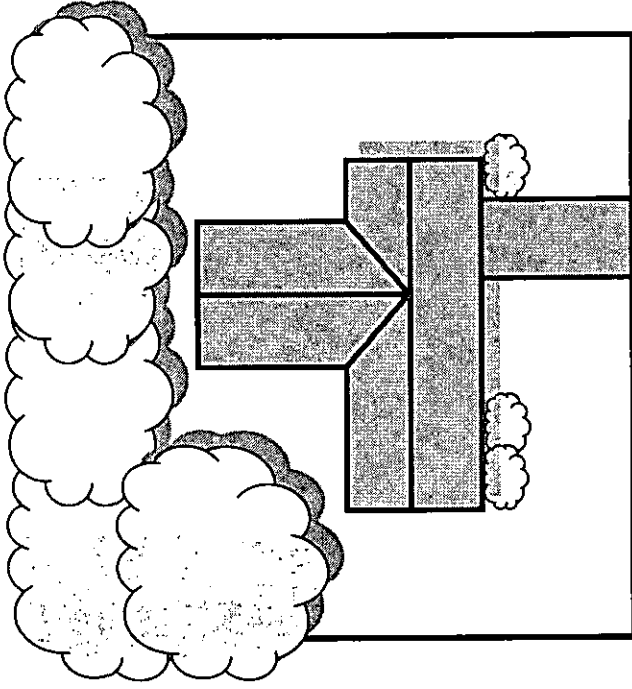
March 12, 2008

Before



- Lot is **greater** than 40,000 sq. ft.
- Forest Area = 20,000 sq. ft.
- No stream buffer, champion tree, etc.

After



- Lot is **greater** than 40,000 sq. ft.
- Forest Loss = 8,000 sq. ft.
- Sediment Control Permit is **required**

Current Forest Conservation Law

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Letter of Exemption from Forest Conservation Plan required – less than 40,000 sq. ft. of forest lost

Bill 37-07

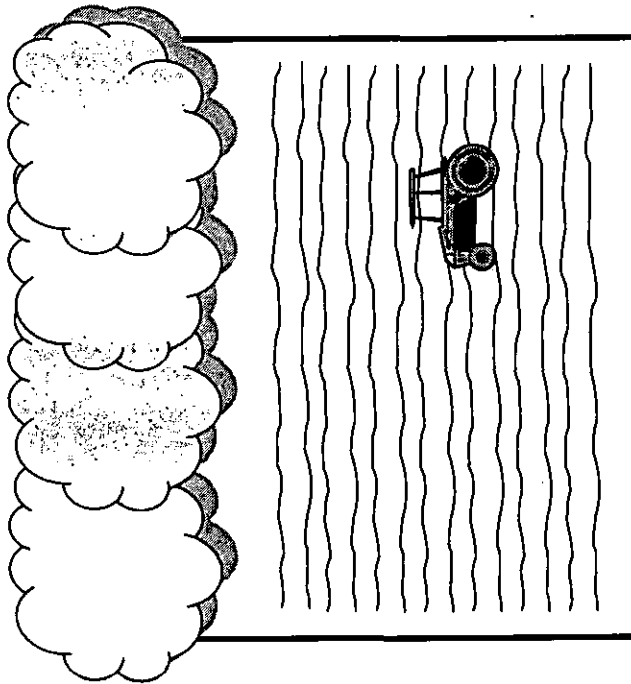
- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 2 Review required – less than 40,000 sq. ft. of forest lost

Elrich Amendments

- FCL applies – lot greater than 40,000 sq. ft. AND Sediment Control Permit required
- Level 1 Review required – more than 5,000 sq. ft. of forest lost

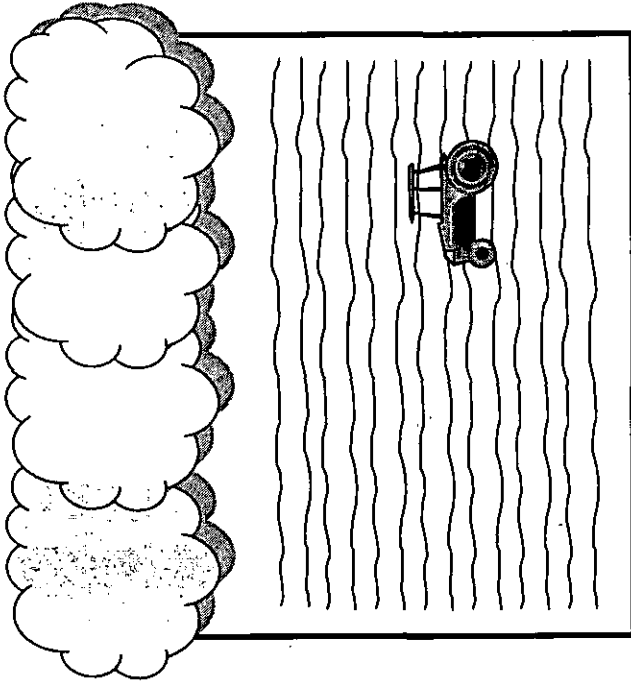
March 12, 2008

Before



- Lot is **greater** than 40,000 sq. ft..
- **Exempt** from platting under Section 50-9
- Sediment Control Permit is **not required**

After



- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9
- Sediment Control Permit is **not required**
- **No** forest loss (no change in activity)

Current Forest Conservation Law

- FCL does not apply – agricultural activities exempt

Bill 37-07

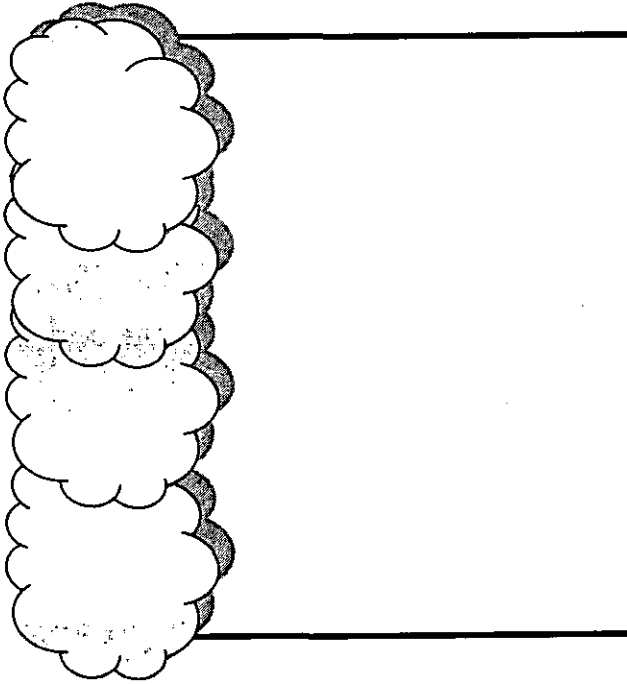
- FCL does not apply – agricultural activities exempt

Elrich Amendments

- FCL does not apply – agricultural activities exempt

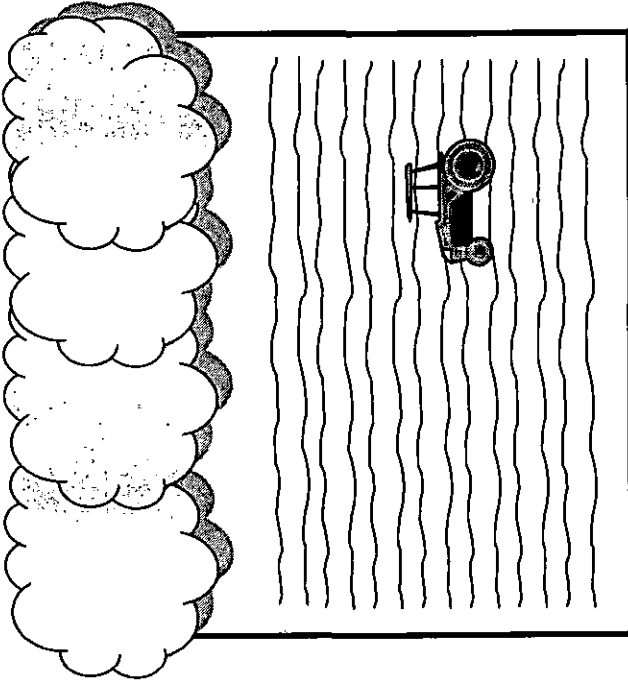
March 12, 2008

Before



- Lot is **greater** than 40,000 sq. ft..
- **Exempt** from platting under Section 50-9

After



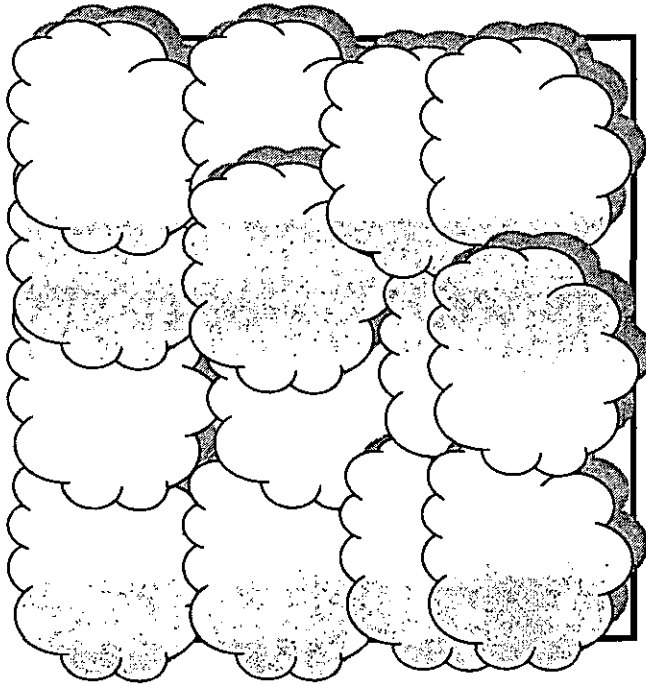
- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9
- Sediment Control Permit is **not required**
- **No** forest loss (change from abandoned field to active farm land)

Current Forest Conservation Law

- FCL does not apply – agricultural activities exempt
- Bill 37-07
- FCL does not apply – agricultural activities exempt
- Elrich Amendments
- FCL does not apply – agricultural activities exempt

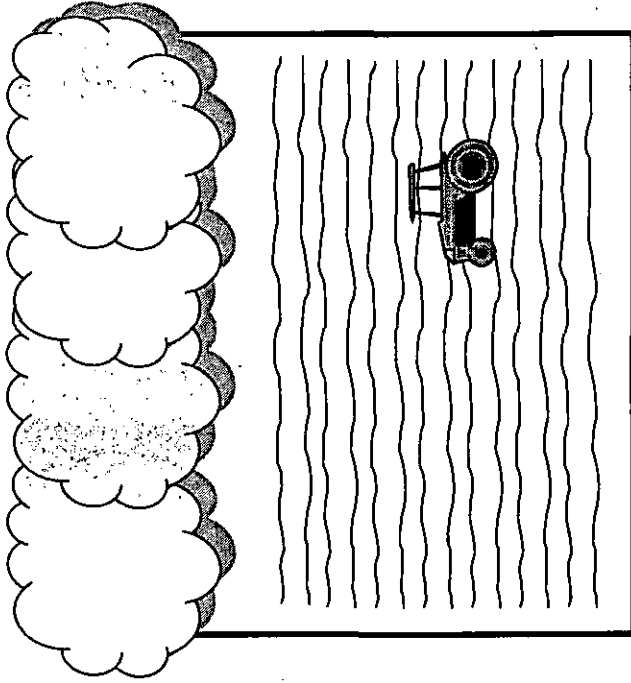
March 12, 2008

Before



- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9

After



- Lot is **greater** than 40,000 sq. ft.
- **Exempt** from platting under Section 50-9
- Sediment Control Permit is **not required**
- Forest loss **greater** than 40,000 sq. ft.

Current Forest Conservation Law

- FCL does not apply – agricultural activities exempt Bill 37-07
- FCL does not apply – agricultural activities exempt Elrich Amendments
- FCL does not apply – agricultural activities exempt

March 12, 2008

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
1	Definition of Forest	A forest must be 10,000 sq. ft. in size and 50 feet in width and does not consider property boundaries. [22A-3]	Same as written in current FCL. [Circle 4 Line 65]	Requires consideration of forest area "regardless of political or property boundaries." [Circle 71 Lines 64 and 67]	
2	Definition of Forest	Specifies a specific number of trees, and a percentage of trees of a particular size, per acre, but does not specify any size or age arrangement of trees. [22A-3]	Same as current FCL. [Circle 4 Line 72]	Same as current FCL. [Circle 71 Line 71]	
3	Trigger for application of FCL	Tract of land must be 40,000 sq. ft. or greater for FCL to apply (except when activity would result in disturbance to champion tree. [22A-4(b), 22A-5(a)(2)(A), 22A-5(n)(2)(A), 22A-5(p)(2)]	Same as current FCL. [Circle 9 Lines 187, 194, 198, 202, 206, 221]	Same as current FCL (but adds application of FCL when disturbance occurs in environmental buffer or special protection area). [Circle 76 Line 179]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
4	Trigger for review by Park & Planning and review requirements under FCL	Activity requires Sediment Control Permit (disturbance equal to or greater than 5,000 sq. ft.) [22A-4]	Level 1 Review – Same as current FCL. [Circle 8 Lines 181-199] Level 2 Review – Activity does not result in the cutting or clearing of more than 40,000 sq. ft. of forest. [Circle 9 Lines 200-234] Level 3 – Forestry activities. [Also see #5 below.]	Level 1 Review – Adds to Bill 37-07 by including cutting of forest in environmental buffers, special protection, etc. [Circle 75 Lines 160-184] Level 2 Review – Activity does not result in the cutting or clearing of more than 5,000 sq. ft. of forest. [Circle 76 Lines 185-227] Level 3 – Forestry activities. [Also see #5 below.]	
5	Trigger for review by Park & Planning of agricultural activities	Agricultural and commercial logging and timber harvesting activities are exempt. [22A-5(b-d)]	Commercial logging and timber harvesting activities would be subject to Level 3 Review. [Circle 10 Line 235-256]	Same as Bill 37-07. [Circle 76 Line 228-257]	
6	Land Use Types	Land Use Types are used to set forest conservation thresholds and afforestation requirements for different land uses and housing density. [22A-12 (a) Table]	Same as current FCL. [Circle 38 Line 957]	Adds two categories: Low Density Residential Area and Highway Rights-of-Way and School Sites. Removes one category: Institutional Development Area. [Circle 86 Line 417]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
7	Reforestation Thresholds	For forest removed above the applicable threshold, mitigation at a certain rate is required. For additional removal of forest below the threshold, more extensive mitigation is required. [22A-12(a) Table]	Increases reforestation thresholds by 5% except in Agricultural and Resource Areas. [Circle 38 Line 957]	Same as Bill 37-07. [Circle 86 Line 417]	
8	Reforestation Ratios	When forest is cleared above the threshold, the requirement is 1/4 acre established for every 1 acre removed. When forest is cleared below the threshold, the requirement is 2 acres established for every 1 acre removed. When mitigation occurs off-site in existing forest, the requirement is 2 acres for every 1 acre of reforestation needed. [22A-4 Definition of Forest Conservation Threshold, 22A-12(c)(1-2), and 22A-12(e)(2)(B)]	Same as current FCL. [Circles 39-40 Lines 989-998 and Circle 42 Line 1072]	When forest is cleared above the threshold, the requirement is 1/2 acre established for every 1 acre removed. When forest is cleared below the threshold, the requirement is the same as Bill 37-07 (2 acres established for every 1 acre removed). When mitigation occurs off-site in existing forest, the requirement is 4 acres for every 1 acre of reforestation needed. [Circle 72 Line 79, Circle 87 Lines 431-440, Circle 89 Line 468]	
9	Afforestation Requirements	A site with less than 20% of the net tract area in forest cover must be afforested in accordance with the afforestation percentages. [Section 22A-12(a) Table]	Establishes afforestation requirement of 20% for all Land Use Types except Medium Density Residential Areas, which is 25%, and adds a definition for Afforestation Threshold. [Circle 3 Line 32 and Circle 38 Line 957]	Establishes afforestation requirement of 20% for all Land Use Types, and adds a definition for Afforestation Threshold. [Circle 69 Line 20 and Circle 86 Line 417]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
10	Fee-in-lieu Rate	The fee-in-lieu rate is set at \$0.90 per sq. ft. This is the estimated cost of purchasing plant material, installing plant material, mulching and watering, controlling invasive plant species, reducing damage from white-tailed deer browsing, surveying for survival, and replacing dead plants.	Same as current FCL.	By a separate resolution, increases the fee-in-lieu to \$2.00 per sq. ft. and adds a mechanism to increase the fee by the percentage amount of the annual average change in the Consumer Price Index. [Circle 99]	
11	Preferred Sequence for Mitigation	Consistent with State FCA giving highest priority to enhancement of existing forest through on-site selective clearing, supplemental planting or both, then on-site reforestation or afforestation. [22A-12(e)(1)(A)]	Changes preference sequence to on-site reforestation or afforestation, then off-site reforestation or afforestation, followed by non-native and invasive management control with supplemental planting. [Circle 41 Line 1030]	Same as Bill 37-07.	
12	Maintenance Period Following Planting	Following planting, 2 years of maintenance is required to ensure forest establishment, or sufficient numbers of thriving trees. [22A-12(h)]	Increases all maintenance periods to 5 years. [Circle 46 Line 1182]	Same as Bill 37-07. [Circle 89 Line 477]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
13	County Arborist – Section 22A-30	County Arborist is not included in the definitions, it is mandated to perform several functions in the FCL, and qualifications and duties are outlined in Section 22A-30. [22A-30, 22A-5(d)(1)(B), 22A-21(c), 22A-26(f and g)] [Also see #14 and 15 below.]	Retains some mandates to the County Arborist [Circle 11 Line 253, Circle 30 Line 750, Circle 57 Line 1463] and removes others [Circle 60 Lines 1543 and 1549], as well as Section 22A-30 [Circle 62 Line 1588]. [Also see #14 and 15 below.]	Retains most mandates of the County Arborist [Circle 79 Line 246, Circle 95 Line 609]. Adds additional mandates [Circle 70 Line 35, Circle 81 Line 300, Circle 82 Line 322]. Recommends changing title to Forest Conservation Coordinator throughout FCL and includes an additional duty relative to identifying potential mitigation sites in Section 22A-30 [Circle 97 Line 691]. [Also see #14 and 15 below.]	
14	County Arborist	The Planning Director may waive requirements for information in forest conservation and tree save plans that are unnecessary. The County Arborist must review requests for variances to this chapter. [22A-10(b)(3), 22A-21(c)]	Same as current FCL. [Circle 24 Line 601, Circle 26 Line 658, Circle 57 Line 1463]	Requires concurrence with the County Arborist before a waiver for unnecessary information can be granted. Retains review requirement for other variances. [Circle 81 Line 300, Circle 82 Line 322, Circle 95 Line 607]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
15	County Arborist	Logging and timber harvest plans are reviewed by the County Arborist to ensure that the plans are not inconsistent with County forest management objectives. [22A-5(d)(1)(B)]	Same as current FCL. [Circle 11 Line 253]	Same as current FCL. [Circle 79 Line 246]	
16	Forest Conservation Advisory Board	Section 22A-31 legislates a board to advise the County Executive and County Council on forest and urban forest issues, policies, management, etc. [22A-31]	Deletes Section 22A-31. [Circle 63 Line 1615]	Same as Bill 37-07.	
17	Champion Trees	The definition of "champion tree" means the largest tree of its species in the County, as designated by the County Forest Conservancy District Board or its designee. [22A-3]	Changes definition by defining "Champion Tree" as the largest tree of its species in the County as identified in the County Forest Conservancy District Board's Champion Tree Register.	Cites the list developed by the Forestry Board but requires that the County Arborist maintain the list. [Circle 70 Line 32]	
18	Champion Trees	The definition of "champion tree" includes non-native invasive tree species. [Expedited Bill 45-06 Line 5]	Same as current FCL. [Circle 3 Line 44]	Same as current FCL. [Circle 70 Line 32]	

Comparison of Major Differences Between Proposed Changes to Forest Conservation Law

#	Issue	Current FCL	Bill 37-07	Elrich Amendments	Notes
19	Champion Trees	The definition of "champion tree" only protects the largest known individual of each species. [Expedited Bill 45-06 Line 5]	Same as current FCL. [Circle 3 Line 44]	Creates and defines a new term "Champion Tree Class" as the largest known tree of each species and all others within 10% of the point value. [Circle 70 Line 29]	
20	Priority areas	References "priority forests" and "priority planting areas," placing higher intrinsic value on them. [22A-11(a)(2)(B), 22A-12(b)(2), 22A-12(e)(3), 22A-12(g)(2)(C-E), 22A-13(e), 22A-27(a)]	Removes several but not all references to priority areas. [Circle 31 Line 794, Circle 39 Line 978, Circle 43 Line 1080, Circle 49 Line 1258, Circle 61 Line 1573]	Same as Bill 37-07.	
21	Legal Standing to Residents	No provisions in current FCL.	Same as current FCL.	Gives Montgomery County residents or organizations legal standing to appeal decisions based on materially false, misleading, inaccurate, or incomplete information. [Circle 93, Line 570]	
22	Advanced Notice	No provisions in current FCL.	Same as current FCL.	Requires advanced notice in writing at least 10 days prior to any forest cutting, clearing, or grading activity to the Planning Director and residents of adjoining properties. [Circle 92, Line 545]	

FOREST CONSERVATION LAW DECISION TREE *For private development; Does not cover ag/govt/utility projects*

Start here:

Does the law apply to you?
Answer "Yes" if one of the following situations applies:

- (1) Submitting a development or site plan (e.g. for a subdivision)
- (2) Lot size $\geq 40,000$ sq. ft. AND you need a sediment control permit (5,000 sq ft of land disturbance)
- (3) Your construction threatens a Champion Tree; Elrich amendments include specimen trees

YES, the law does apply to me

Do you qualify for a Level 1 Review?
Answer "Yes" if the application is for:

- A development or site plan clearing either:
 - more than 5,000 sq. ft. of forest (Elrich amendments)
 - more than 40,000 sq. ft. of forest (~1 acre) (Bill 37-07)
 - any forest in a stream buffer
 - any champion tree, Elrich amendments include specimen trees
- any forest in a Special Protection District

Yes, I qualify for a Level 1 Review

Level 1 Review under Elrich Amendments and Bill 37-07 Requirements
 (Full FCL review and mitigation required):

- Submit a **Natural Resource Inventory / Forest Stand Delineation**, showing the environmental (soil, wetlands, etc.) conditions on the property and location of all trees
- Submit a **Forest Conservation Plan** showing what trees will/won't be cut
- Perform **mitigation as required in the law**. This may include:
 - On site tree preservation
 - On-site replanting
 - Off-site replanting
 - Fee-in-lieu

Purpose of requirements:

- Slow the rate of forest loss in the county
- Incentivize on-site preservation of forest
- Provide for off-site mitigation

No, I qualify for a Level 2 Review

Requirements:

- Submit a **declaration of intent** that you qualify for the exemption and will not clear more forest for 5-7 years
- Submit a **Tree Inventory and Protection Plan** showing what trees you will/won't cut and how you will protect retained trees
- NO replanting/mitigation required**

Purpose of requirements:

- Prove that you qualify for this level of review
- Ensure no forest beyond allowed amount will be cut or lost due to construction

NO, the law does not apply to me

Requirements: NONE

Relative Sizes for Comparison of Forest Area

NFL Football field (not including end zones): 48,000 square feet

NHL hockey rink: 16,000 square feet

Olympic swimming pool: 13,500 square feet

NBA basketball court: 4,700 square feet

Relative Size information courtesy of the Potomac Conservancy

Planning Board applicability amendment to Bill 37-07

Replace ©8-12, lines 178-276, with the following:

(a) *Applicability.* This Chapter applies only to a person that:

- (1) is required by law to obtain approval for a development plan, diagrammatic plan, project plan, preliminary plan of subdivision, or site plan;
- (2) is required by law to obtain a sediment control permit or a special exception on a tract of land 40,000 square feet or larger;
- (3) performs any cutting or clearing, or any other land disturbing activity, that would threaten the viability of, any champion tree, wherever located;
- (4) is subject to mandatory referral, or a park facility plan, on a tract which is 40,000 square feet or larger;
- (5) performs highway construction; or
- (6) is a public or private utility that proposes a cumulative limit of disturbance of 40,000 square feet or more for all stages of work in a public right-of-way or utility easement.

(b) *Types of Review.* Each person to whom this Chapter applies is subject to either a Level 1, Level 2 or a Level 3 Review. If a person meets the criteria for either a Level 1 or 2 Review, that person is not subject to a Level 3 review. If a person does not meet the criteria for either a Level 1 or 2 Review, that person is subject to a Level 3 review.

(c) *Documents required.*

- (1) A Level 1 Review requires the person to submit a Declaration of Intent.
- (2) A Level 2 Review requires the person to submit a Tree Inventory, Tree Protection Plan, and Declaration of Intent.

(3) A Level 3 Review requires the person to submit a Natural Resource Inventory/Forest Stand Delineation and a Forest Conservation Plan.

(d) Level 1 Review. A person must submit to a Level 1 Review if the person proposes:

(1) an agricultural activity that:

(A) need not record a subdivision plat under Section 50-9(a);

and

(B) does not need a sediment control permit under Section 19-2(c)(2).

An agricultural support building and related activity does not require a Level 1 Review if the person shows that the building will be built and the activity will be conducted using best management practices, as defined by the Natural Resources Conservation Service;

(2) a tree nursery;

(3) a special exception for an existing structure which will not result in clearing any existing forest or trees;

(4) a commercial logging and timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code, that has received:

(A) approval from the County Arborist or the Arborist's designee that the logging or timber harvesting plan is consistent with County forest management objectives and is otherwise appropriate; and

- (B) a sediment control permit from the Department of Permitting Services, and has posted the required financial security under Chapter 19. A person who qualifies under this paragraph must provide a copy of each sediment control permit issued for commercial logging and timber harvesting operations to the Planning Director;
- (5) a government project reviewed for forest conservation purposes by the State Department of Natural Resources under state law;
- (6) routine maintenance of a public utility easement or right-of-way, and routine maintenance of a stormwater management facility that is not subject to an existing conservation easement, except for clearing an access road;
- (7) utility or other work required in an emergency;
- (8) noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code; or
- (9) cutting or clearing public utility rights-of-way or land for an electric generating station licensed under state law if a certificate of public convenience and necessity has been issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code.
- (e) Level 2 Review. A person must submit to a Level 2 Review if the person proposes:
- (1) to build on an existing single lot which is 40,000 square feet or larger a house, an addition to a house, or an accessory structure (such as a pool, tennis court, or shed), if the activity does not result in cutting clearing, or grading;
- (A) more than 40,000 square feet of forest;

- (B) any forest in a environmental buffer;
 - (C) any forest on property located in a special protection area which requires a water quality plan;
 - (D) any specimen or champion tree, or
 - (E) any tree or forest that is subject to a previously approved forest conservation plan;
- (2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a lot line adjustment, conversion of an existing recorded outlot, or joining 2 or more existing residential lots into one lot, if:
 - (A) the only development to be located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); and
 - (B) development does not result in cutting, clearing, or grading:
 - (i) more than 40,000 square feet of forest;
 - (ii) any forest in an environmental buffer;
 - (iii) any forest on property located in a special protection area which requires a water quality plan;
 - (iv) any specimen or champion tree, or
 - (v) any tree or forest that is subject to a previously approved forest conservation or tree save plan;
- (3) modifying existing non-residential developed property if less than 5,000 square feet of forest will be cleared; or
- (4) a State or County highway construction activity that is subject to Section 5-103 of the Natural Resources Article of the Maryland Code.